



IN THE HIGH COURT OF MALAWI

CRIMINAL DIVISION

MZUZU REGISTRY

CONFIRMATION CASE NO. 212 OF 2019

Being Criminal Case No. 15 of 2019 in the FGM's Court at Rumphi

REPUBLIC

VERSUS

SANDRESS MKANDAWIRE

CORAM: HON. JUSTICE T.R. LIGOWE

W. Nkosi, of Counsel for the State

C. Duke, of Counsel for the Respondent

F. Mwakhwawa, Official Interpreter

J.N. Chirwa, Court Reporter

JUDGMENT

Ligowe J.

1 Sandress Mkandawire was convicted of the offence of unlawful wounding contrary to section 241 (a) of the Penal Code and sentenced to imprisonment for three years by the First Grade Magistrate at Rumphi. He wounded his wife Annie Phiri on 11th October 2018. He had been married to her for about eight years. The wife started an extra marital affair with another man who he alleged had given her a cellphone. This caused disagreements between them and he sent her back to her home at Chandiwira Village, T/A Mtwalo, Mzimba at Kamwe from his home at Chakwenda Village, T/A Mtwalo, Mzimba. On 11th October 2018 around midnight, his wife felt like someone was opening the door of the house she slept in at her home village. When she asked she noted it was her husband and

she let her in. Upon entering the house at the sitting room, he asked her who the owner of the cellphone was. She said it was for her mother. Upon this he started struggling with her to snatch the phone away. In the process she was lying down on her stomach with him sitting on her back. She hid the phone between her breasts. He left her for a moment and then took a knife with which he stabbed her on the neck. The lower court observed a scar of about 3 – 4 inches on the front of her neck which was still fresh. The medical examination report exhibited shows that the wound was superficial and it was cleaned with iodine and sutured.

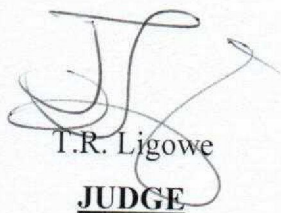
- 2 In his defence the husband claimed that he was at his home sleeping at the time his wife was being wounded. His aunt Annie Chunga testified that she got a call around the same midnight from his father in law to check if he was home because his wife had been wounded on the neck with a knife, and she found him sleeping. Dominic Chitsulo also testified that the Defendant woke him up around the same midnight to report about the incident. Proffer Mkandawire, a member of the Community Policing Forum at Chakwenda Village also testified that the Defendant came to wake him up around 12:10 the same night regarding the same incident. He called the home of the wife and they told him the Defendant had recently been there. He was surprised, because there is a long distance between Kamwe and Madisi. Their view was that he could not have been at his wife's home the same night and commit the offence.
- 3 The court below found the alibi untenable because it was found that the witnesses were not together with the Defendant the whole of the night before the incident occurred. His wife had properly recognized him as his entry into her house was peaceful at first and they conversed with each other regarding the cellphone. He came to his wife's house on a motorbike such that he could have travelled quickly between the two villages. And that, Biton Chisulo the wife's grandfather woke up to chase the Defendant when she shouted for help. He noted that it was the Defendant because he chased so close, he was wearing his usual jacket and he ran away on his motorbike.

- 4 The reviewing Judge ordered the matter to be set down to consider enhancing the sentence in view of the domestic relationship between the offender and the complainant and the fact that the manner he used the knife on his wife was tantamount to attempted murder.
- 5 Counsel representing the State submitted that the sentence should indeed be enhanced because the offender stabbed his own wife and he committed the offence at night. He referred to two cases for which he provided no proper citations or copies to this court. Because I could not find the cases, I have no reason to use them in this decision.
- 6 Counsel representing the Defendant submitted that the sentence should be confirmed. His argument was mainly that the Defendant is a first offender and was youthful at the time he committed the offence. As was held in *Republic v. Kathumba* [1997] 1 MLR 390, for such offenders "a shorter imprisonment may be just as effective as a longer one."
- 7 This court has to decide whether it is indeed proper to enhance the sentence in the circumstances. In *Republic v Jonathan* 13 MLR 389, the prisoner struck the complainant on the leg with an iron bar causing serious injury thereby. While in hospital, the medical authorities had no alternative but to amputate the leg at the knee. He had been charged with causing grievous harm, contrary to section 238 of the Penal but upon pleading guilty, the Resident Magistrate convicted him of unlawful wounding and sentenced him to imprisonment for four years. The Magistrate thought there had to be an intent to kill for the offence to constitute grievous harm. However grievous harm as defined under section 4 of the Penal Code means "any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, membrane or sense." It does not require any intent to kill. Upon review, the High Court quashed the conviction of unlawful wounding and replaced it with grievous harm but maintained the sentence.
- 8 Unlawful wounding under section 241 of the Penal Code is punishable with imprisonment for seven years while grievous harm under section 238 of the Penal Code is punishable

with imprisonment for fourteen years. According to the Magistrate's Court Sentencing Guidelines, Malawi Judiciary 2016, the starting point for sentencing unlawful wounding is 12 months while grievous harm is five years. Grievous harm is more serious than unlawful wounding and this has to reflect in their sentencing.

9 While the wound was inflicted by a knife on the neck of his wife by the Defendant in the present case and thereby tantamount to murder, I am of the view that while she lives, the injury she suffered is less than the one in *Republic v Jonathan* (supra). I will for this reason, maintain the sentence of imprisonment for three years in this case.

10 Delivered in open court this 4th day of August 2022.


T.R. Ligowe
JUDGE