



IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CRIMINAL DIVISION  
HOMICIDE CASE NO. 47 OF 2017

THE REPUBLIC  
V  
CHIMWEMWE DANIEL

**Coram: Hon. Justice M L Kamwambe**

Mr Chisanga of counsel for the State

Mrs Chirwa of counsel for the Accused

Amos.....Official Interpreter

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**SENTENCE**

***Kamwambe J***

On the 27<sup>th</sup> day of July, 2017 the accused person was convicted of manslaughter contrary to section 208 of the Penal Code on his own plea of guilty and admission of the facts narrated by the State as correct. This matter is here for consideration of the appropriate sentence.

Under section 211 of the Code the maximum sentence for the offence of manslaughter is life. Courts use their discretionary powers to mete sentences. Such powers must be used judicially by following and considering relevant principles of sentencing and

mitigating or aggravating factors. One of the principles is that the maximum sentence is reserved for the worst offenders in the worst manner. In the case of **The Rep. v Samson Matimati** Criminal Case No. 18 of 2007 the court said that courts should not look only at how bad the offence was committed but should also consider the personal and individual circumstances of the offender in mitigation. It is very rare that life sentence is meted for manslaughter and I am yet to see one. Courts have tended to exercise their discretion by imposing term sentences.

Lord Denning in **S. v Kuwalo (B)** said that 'every sentence must adequately reflect the revulsion felt by the great majority of citizens'. Of course a sentence must be blended with a measure of mercy after considering the circumstances of the offence and the offender. Sentencing is a balancing exercise. Circumstances of the offence may include the type of weapon used in committing the offence and how it came into his use, provocation, level of participation in the crime, whether the killing was instantaneous, self-defence et cetera.

Sentences imposed ought to be meaningful and that they appeal to public sense and not meet public condemnation. The public and the offender should not perceive the sentence with contempt or shock because it is manifestly low or high. I agree with the dicta of Justice Chipeta (as he was then) in **R v Dalitso Mathuso** Criminal Case No.27 of 2008 (unreported) that:

*"...to me, 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 one who has stolen property worthy or money amounting to a few hundred kwacha. While circumstances will differ from one case to another, I cannot comprehend a court punishing a person who has broken into a house and stolen something more than who has actually killed a person and where clearly that person will not return to life. I am accordingly not*

*persuaded that courts should be thinking of sentences as 2 or 3 years imprisonment for offences of this type. "*

Manslaughter is a serious offence hence it attracts a heavy maximum sentence of life. By its nature it is an aggravating factor in itself. Use of a dangerous or lethal weapon such as a gun or a knife aggravates the situation. In our present case the convict used a knife to kill the deceased. He stabbed him twice on the chest.

However, the mitigating factors seem to outweigh the aggravating ones. The convict pleaded guilty. A guilty plea entitles one up to a third reduction of what would be the sentence, depending upon the circumstances. Courts should be cautious not to treat every guilty plea as a demonstration of remorse. To show remorse much more is required. The court record shows that even in his caution statement he admitted causing the death of the deceased. The court will take this into consideration.

It appears that the convict was provoked by the deceased who was challenging him for refusing to pay at the cinema after the film show was stopped due to electricity blackout, hence, a fight ensued. The convict was not the aggressor but the deceased. This I will take into account.

The law favours the young and the old (**R v Ghambi [1971-1972] ALR Mal 457**). The young refers to those in the bracket of 18 to 25 years old and may go slightly higher than that, and the old are those over 60 years of age considering the current life expectancy being at 56 for men. The young are taken to be inexperienced in the ways of life and tend to be more adventurous, as a result, they are prone to making foolish decisions and mistakes **R v Felix Madalitso Keke Confirmation Case No. 404 of 2010**). The accused was 20 years old when he committed the offence. A good measure of mercy should be accorded to him. Further, he is a first offender.

The law prefers that first offenders should not be subjected to long prison terms unless the facts dictate otherwise. Long prison terms should be reserved for repeat offenders and those involved in worst scenario cases.

In the case of **R v Dalitso Mathuso** (supra) the accused person pleaded guilty to manslaughter and he was a young person of 23 years. A custodial sentence of 10 years was imposed.

In **R v Geniyo Gelsoni Criminal Case No. 95 of 2008** the accused killed the deceased who followed him to his house after he overheard the accused person insulting him. The deceased started fighting the accused person with a bamboo stick. The accused person ran into his house and the deceased person followed him banging on the door. The accused person then came out and started fighting the deceased person in the course of which, he stabbed him to death with a knife. The accused person was a 32 years first offender. He was sentenced to 9 years imprisonment.

In **R v Stephen Mboola Criminal Case No. 123 of 2009** a sentence of 12 years was meted where the accused person killed the deceased after he was angry that he had eaten his nsima and mice. He chased the deceased up to a distance of 150 meters and stabbed him after catching up with him. The accused person was a 22 years first offender who readily pleaded guilty.

In **R v Tepeya Katimbe Criminal Case No. 29 of 2008** the High Court imposed a sentence of 14 years imprisonment where the accused person stabbed the deceased person in the stomach with a bicycle spoke when he was angry that the deceased prevented a girl from going out with him. The accused person pleaded guilty and was a first offender.

In the present case, the accused person was 20 years old when he committed the offence and is a first offender. He was seemingly provoked into fighting and he ended up stabbing to death the deceased person. He pleaded guilty just as he admitted at the police. A sentence of 10 years imprisonment is befitting for the convict.

**Pronounced** in Open Court this 26<sup>th</sup> day of January, 2018 at Thyolo.



M.L. Kamwambe

**JUDGE**