



**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
MZUZU DISTRICT REGISTRY
CRIMINAL DIVISION
MURDER CASE NO. 165 OF 2018**

BETWEEN:-

**THE REPUBLIC
AND
PITSON KAYUNI
PAUL TEMBO**

CORAM: THE HONOURABLE JUSTICE .T.R. LIGOWE
W. Nkosi, Counsel for the State
Ganizani Msukwa, Official Interpreter
Edwell Kanyika, Court Marshal
R. Luhanga, Court Reporter

Ligowe, J

SENTENCE

1. This court on 10th July, 2020 convicted Paul Mbizi Tembo of the murder of Sekani Ndovi contrary to section 209 of the Penal Code.
2. The brief facts are that while drunk, Sekani Ndovi was quarreling with Pitson Kayuni at Florence Mbughi's house because Pitson Kayuni had beaten Eliya Mwafulirwa who was Sekani Ndovi's uncle. It so happened that Paul Mbizi Tembo was there and appeared to be on the side of Pitson Kayuni.

3. Being unhappy with the noise the young man were making, Florence Mbughi chased them from her house and they went to the road to continue quarreling.
4. The evidence that led to the conviction is that Paul Mbizi Tembo hit Sekani Ndovi on the legs causing him to fall down facing upwards and trampled on his neck with shoes. Meanwhile Pitson Kayuni was pleading with his friend not to do that. Afterwards Pitson Kayuni tried to wake Sekani Ndovi up but failed. This was happening in the evening 24th January, 2018 between 7.00 pm and 9.00 pm. Later, Sekani Ndovi was reported dead and the cause of death was suffocation as a result of a broken hyoid bone due to assault.
5. The court must now determine the appropriate sentence for the convict.
6. Murder is according to section 210 of the Penal Code punishable with death, or imprisonment for life. Until around 2007 murder attracted a mandatory penalty of death. That changed with the decision in Kafantayeni and others vs Attorney General (2007) MLR 104, that the mandatory sentence was unconstitutional.
7. Later in 2011, section 210 of the Penal Code was amended to include the punishment of imprisonment for life.
8. Now that the sentencing for murder is also discretionary on the part of the sentencing court, death or life imprisonment are maximum penalties reserved for worst offenders.
9. Paul Mbizi Tembo is a first offender. The record indicates he was 35 years old at the time his trial started in 2018. He was a student of journalism in first year at polytechnic when he was arrested. He is married and has five children. He also told this court that he has a medical problem of rectal prolapse whereby the sphincter muscles of the rectum protrude during defecation.

10. All these factors considered together with the manner the death of Sekani Ndovi was caused, do not get any nearer to a worst offender of murder.
11. There is no reason however to consider the plight of his wife and children as it is trite that these should not preoccupy the mind of the court when sentencing, lest the offence the offender committed gets ignored and occasion injustice to the victims and the public.
12. Yes this court was also told of the offender's medical problem but not how that warrants him to be given a non custodial sentence.
13. The state submitted that the court should consider that he committed the offence in the company of another person, but the facts are that Pitson Kayuni did not take part in the offence and infact was discouraging Paul from beating the deceased.
14. State counsel also submitted that Paul's insistence at attacking the deceased should be considered as an aggravating factor, but I think this gets cancelled out by the fact that Pal was drunk at the time.
15. Paul himself submitted that all this happened as a result of misjudgment due to intoxication. The state agrees.
16. Yes at the age of 35 Paul Mbizi Tembo is old enough to face the full rigour of the penalty for the offence he committed.

The state referred to Tryson Mwale v Republic MSCA Civil Appeal No 17 of 2004, where an appellant aged 76 and in poor health was sentenced to imprisonment with hard labour for eight years. Republic vs Dalitso Mathuso Criminal Case No 27 of 2008, 10 years imprisonment with hard labour were imposed on a 23 year old first offender who pleaded guilty. Republic vs Bella Musanya, Criminal Case No 28 of 2008, imprisonment for 12 years with hard labour were imposed on a 52 year old man who was a first offender and

pleaded guilty to beating a thief to death. Skenard Tebulo vs Republic, MSCA, Criminal Case No 30 of 2006, a 31 year old appellant in good health was sentenced to 12 years imprisonment with hard labour.

17. Counsel did not provide the court with copies of the decisions. But I know Republic vs Dalitso Mathuso (supra) was applied in Republic vs Bonongwe, homicide Case No 199 of 2016 (Principal Registry) (unreported) and the facts stated are that the offender had pleaded guilty to a charge of manslaughter.
18. I tried but I wasn't able to find the decisions cited by counsel for the state. In his submissions, they have been presented as though they were all cases of murder, but as it has turned out Republic vs Dalitso Mathuso was a plea of guilty to manslaughter. It required that I should read the decisions myself so as to see how they relate to the present case.
19. That has not been possible, but considering all the factors the factors in the present case, I am of the view that imprisonment with hard labour for a period of 12 years is appropriate for this offender. So I order. It will run from the date he was arrested.
20. Pronounced in open this 14th day of December, 2020 at Mzuzu.


T.R. Ligowe
JUDGE