



**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY**

CRIMINAL DIVISION

CRIMINAL CASE NO. 130 of 2022

THE REPUBLIC

and

BLESSINGS LIFA

CORAM: Honourable Justice Annabel Mtalimanja

Ms. Jafali, Ms. Msimuko, for the State

Ms. Jonasi, for the Defendant

Mrs. Kalumbi, Court Reporter

Mrs. Choso, Court Clerk

SENTENCE

Mtalimanja, J

Facts

1. The Defendant, Blessings Lifa, was charged in this Court with the offence of Murder contrary to section 209 of the Penal Code, Cap. 7:01 of the Laws of Malawi. The particulars of the offence alleged that on or about the 12th of December, 2019, he, with malice aforethought, caused the death of Alfred Khomani, the Deceased. The facts are as follows: The Defendant is about 35 years of age, married with 3 children. At the material time he was employed as a Builder/Guard and was residing at the work premises within the City of Lilongwe at Biwi location, along with his family. On the morning of the material day,

he left his house for Wakawaka, within the same City, with the intention of hiring a motor bicycle operator (popularly known as “Kabaza”), with the further intention of killing the said operator. To dupe the operator, now the Deceased, the Defendant hired him to ferry cement from his house. When they arrived at the house, at the Defendant’s prompting, the Deceased drove the motorcycle into the Defendant’s compound so that he could pack the bag of cement on to the motorcycle. As the Deceased was doing this, the Defendant struck him at the back of his head, as a result of which the Deceased fell down. The Defendant struck him again and he died. The Defendant then dug a shallow grave within the compound and buried the dead body. He sold the motorcycle. He also took the Deceased’s phone, which sim card he used once in his own phone. On his own plea of guilty and admission of the preceding facts as correct, the Defendant was convicted as charged.

Issue

2. Following the conviction, the task of this Court is to determine an appropriate sentence, all circumstances of the case considered.

Determination

3. In mitigation, the Defendant invited the Court to consider section 19 of the Constitution of the Republic of Malawi which proscribes torture or any kind of cruel, inhumane or degrading treatment or punishment. The Defendant submitted that the Court must consider the principle of proportionality when arriving at the sentence and regard must be had to the fact that the maximum sentence provided for by statute is reserved for the worst offender. The Defendant also submitted that the Court must consider the public interest in sentencing, particularly that sentences must go beyond considerations of deterrence and align to the overall objectives of justice, reformation, restoration and rehabilitation. The Defendant then submitted that the Court must consider his personal circumstances, i.e. his age; that he is a Builder by profession, with a wife and children who were depending on him financially; he has potential for reform and social re-adaptation; and that he pleaded guilty. Furthermore, the Defendant submitted that in arriving at the sentence, the Court must have regard to the period which he has already spent in custody, namely, the period from 8th February, 2020 when he was arrested and remanded into custody. Finally, the Defendant invited the Court to take notice of the fact that he was convicted of a similar charge of Murder and was sentenced to 49 years imprisonment on 18th November, 2022. This being the case, a sentence of 10 years is appropriate in the circumstances, so went the submission.
4. Sentencing is not a science but an art staked on the discretion of the court guided by the law and sentencing principles settled over time. In terms of the law, the offence with which the Defendant stands convicted carries the maximum sentence of death or life imprisonment. Regarding the sentence prescribed by the law, this Court will be guided by two principles. Firstly, that where a charging section provides for a maximum sentence,

the court is at liberty to impose any sentence from the minimum of one day up to the maximum – *Republic v Luhanga* [2008] MLR 283 (HC). Secondly, the maximum sentence is reserved for the worst offence of its kind – *Ayami v Republic* [1990] 13 MLR 19 (SCA).

5. Coming to the personal circumstances, this Court has addressed its mind to the fact that the Defendant is a relatively young man, who saved the Court's time by readily pleading guilty. This Court has also addressed its mind to the submission that it should consider the fact that the Defendant has a wife and children who depend on him and will suffer financially should he be incarcerated for a long time. On this aspect, the Court has recourse to the case of *Chitsonga v Republic* [1995] 1 MLR 86 (HC) where it was stated that:

“Domestic matters are not matters that a court takes into account when sentencing. All offenders have families. For most any sentence brings some measure of hardship and deprivation. It is only when these are exceptional or unusual that courts are duty bound to depart from the normal. In R v Ingham, 3 October 1924, Lord Widgery CJ said:

“So it is not altogether an easy case, but of course this always happens, time and time again, that imprisonment of the father inevitably causes hardships to the rest of the family. If we were to listen to this kind of argument regularly and normally in the cases that come before us, we should be considering not the necessary punishment of the offender but the extent to which his wife and family might be prejudiced by it. The crux of the matter is that part of the price to pay when committing a crime is that imprisonment does involve hardship on the wife and family, and it cannot be one of the factors which can affect what would otherwise be the right sentence.”

In this case the matters raised by the appellant in relation to his wife and parents are things that should have been anticipated by the offender. There is nothing unusual or abnormal to require this Court, or even the court below, to condescend.”

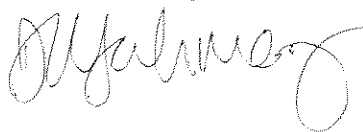
6. This Court finds no reason to depart from this reasoning as the Defendant ought to have anticipated hardship on his family before committing the offence.
7. As indicated in his submissions, the Defendant is not a first offender. He was convicted of the offence of Murder and sentenced to 49 years imprisonment by this very Court on 18th November, 2022 in *Republic v Blessings Lifa Criminal case No. 183 of 2021*. In that case the Defendant hired another *Kabaza* operator under a ruse of ferrying cement bags. He killed him by striking him on the head then buried the dead body in a shallow grave in the compound. He sold the motorcycle to a third party. This offence was committed on or about 14th December, 2019.

8. It will be observed that the facts in that case are in all material respects similar to the present facts. Just like in *Criminal Case No. 183 of 2021*, herein the Defendant mercilessly took the life of the Deceased, whose only but fatal mistake on the material fateful day was to be peddling the business of “*kabaza*” to fend for himself and his family at Wakawaka. A classic case of the Deceased being at the wrong place at the wrong time, falling into the Defendant’s callous plan to kill and rob someone to make money. It would appear the Defendant was on a killing spree as the two offences were committed very close to each other in time.
9. It will be recalled that the Defendant submitted that a 10 year sentence is appropriate in the present circumstances. However, whilst taking cognizance of the fact that he readily pleaded guilty and is young enough to be a productive member of the society, this Court finds that the crime that he committed is so heinous and completely reprehensible, such that it would be an affront to the sanctity of human life to impose such a term as submitted. As was stated in the case of *Republic v Makanjila and others [1997] 2 MLR 150 (HC)*

“...there are some crimes so heinous that a plea of youth, a plea that the crime was a first offence or that the prisoner has not been to prison before are of little relevance. Those who participate in them, even if they pleaded guilty, even if they were young, even if they had no previous convictions... should know that they will eventually be subjected to long and immediate custodial sentences.”

10. Having considered all the circumstances in this matter, particularly the manner in which the crime was committed and the previous conviction for an offence committed in similar fashion, this Court imposes a sentence of life imprisonment on the Defendant, effective from his date of arrest, 31st January, 2020.
11. It is so ordered.

Made in Open Court this 20th Day of April, 2023.



Annabel Mtalimanja
JUDGE.