



IN THE MALAWI SUPREME COURT OF APPEAL

AT BLANTYRE

MSCA CRIMINAL APPEAL NO. 33 OF 2005

(Being High Court, Sitting at Mwanza, Criminal Case No. 1 of 2003)

BETWEEN:

JAMES GALETA 1ST APPELLANT

WATSON MAKANIKO..... 2ND APPELLANT

AND

THE REPUBLIC..... RESPONDENT

**BEFORE: THE HON.CHIEF JUSTICE MUNLO,SC, JA
THE HON. JUSTICE TAMBALA,SC, JA
THE HON. JUSTICE TEMBO,SC, JA**

M'mame, Counsel for the Appellants
Phillipo, Counsel for the Respondent
Mwale, Chief Law Clerk

JUDGMENT

TEMBO SC JA

The appellants were convicted of the offence of murder contrary to section 209 of the Penal Code by the High Court, sitting with a jury at Mwanza, on 6th August, 2006. Thereupon, the court sentenced both of them to suffer death according to law. This is their appeal against conviction based on the sole ground of appeal that the conviction was against the weight of evidence tendered during trial.

A glance at the court record of the High court clearly shows the following: there were three accused persons, namely, James Galeta (herein 1st appellant); Watson Makaniko (herein 2nd appellant); and Ligisi Kapalepale whom the High Court acquitted of the offence of murder, at the end of the trial, on the not guilty verdict of the jury. The State paraded

three witnesses to prove the charge levelled against the three accused persons. On their part, all the accused persons elected to remain silent on being called upon to testify in their own defence.

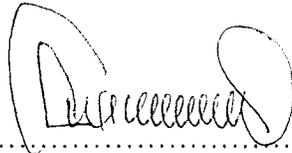
Consequently, the facts in the instant case are only gleanable from testimonies of witnesses for the prosecution. Such facts include unqualified and unchallenged caution statements of the appellants which were tendered as part of the prosecution led evidence. In that respect, we hasten to observe that the appellants had not retracted their caution statements before the court below where and when the jury considered and returned the verdict of guilty against both appellants.

In the main, on or about 20th December, 1999, the appellants conspired to rob some foreign exchange dealer of money for the Christmas festivities. It so happened that by then the deceased was one of the several foreign exchange dealers who plied their trade at Mwanza Border Post. On or about the fateful day, the deceased was seen at his place of abode quite early in the morning as he set off for Mwanza Border Post for his business. Unlike on any other previous occasion, the deceased thereafter did not return home until when his body was discovered in a decomposed state, some days later, along the banks of Mkame river in Mwanza district.

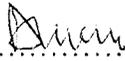
In their caution statements, which we have observed were not retracted, the appellants made graphic description of how, quite early in the morning on the fateful day, they waylaid and mercilessly pounced on the deceased as he sought to ride his bicycle past them. They brought the deceased down from his bicycle and thereupon brutally smashed his head with a hoe handle until the deceased passed away. Whereupon, they took his body to the riverside where they hurriedly buried it in a shallow grave. Consequently, some parts of the body of the deceased remained exposed. Pw1, the brother of the deceased, subsequently discovered the body thereat and then reported the matter to the police.

Commencing with its decision in the case of **Kafwambila -v- The Republic**, 5 MLR 320 this court has consistently held that it will not interfere with the verdict of the jury, if upon examination of the court record of the High Court, this court holds the view that there was sufficient evidence upon which the verdict of the jury could have been founded. Consequently, considering and approaching the instant appeal in that perspective, we have serious difficulties in appreciating the submission of the appellants that their conviction was against the weight of the evidence tendered during trial. To the contrary, it is our considered view that the facts, which we have briefly outlined above, irresistibly and overwhelmingly lead to the only conclusion that the verdict of the jury was well founded. Accordingly, we dismiss the appeal in its entirety.

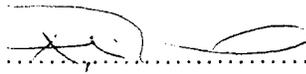
DELIVERED in Open Court at Blantyre this 14th day of January, 2010.



Signed.....
Hon. Chief Justice L. G. Munlo, SC, JA



Signed.....
Hon. Justice D.G. Tambala, SC, JA



Signed.....
Hon. Justice A.K. Tembo, SC, JA