REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

ZOMBA REGISTRY

CRIMINAL CAUSE NO 14 OF 2018

REPUBLIC

\- **VERSUS –**

KENNETH MOSES……………………………………….1ST ACCUSED PERSON

STEVEN LIPIYASI……………………………………….2ND ACCUSED PERSON

ULEMU MWANGOMBA……………………………….3RD ACCUSED PERSON

HERBERT MALONI…………………………………….4TH ACCUSED PERSON

MADALITSO SAULOSI…………………………….…5TH ACCUSED PERSON

HANIWELL KAPOTA………………………………….6TH ACCUSED PERSON

LESTON MAFUSO……………………………………….7TH ACCUSED PERSON

JUSSAB SAITON NGOZO……………………………8TH ACCUSED PERSON

DU GEOFFREY MKWAILA…………………………..9TH ACCUSED PERSON

FRANCISCO KAMTSITSI……………………………10TH ACCUSED PERSON

MANUEL MASTER…………………………………….11TH ACCUSED PERSON

CORAM: HON. JUSTICE PROF. KAPINDU

Messrs Malunda & Masanjala, of Counsel for the State,

Mr. Majekete, Ms. Mfuni-Chikaipa, of Counsel for the Defendants

Mr. Banda, Official Interpreter

Mrs. L. Mboga, Court Reporter

JUDGMENT ON SENTENCE

KAPINDU, J

1. The very first preambular words of the Constitution of the Republic of Malawi, 1994 (the Constitution) begin with an expression by the people of Malawi of their recognition of the sanctity of human life. These constitutional preambular words speak to the fact that when Malawians adopted the text of their Constitution in 1994, at the forefront of their minds was the individual and collective duty, commitment and responsibility to ensure that the life of every human being everywhere is respected and protected in safety and dignity.

2. The right to life which is guaranteed for every person under section 16 of the Constitution, has been described as the supreme right from which no derogation is permitted, even in situations of armed conflict and other public emergencies which threaten the life of the nation.[1] This position is evident from section 45(1) & (2) of the Constitution. The Constitution, in section 45(2)(a), provides that there shall be no derogation with regard to the right to life.

[1] See General comment No. 36 of the Human Rights Committee, para. 2.

3. It is further stated, and correctly so, that the right to life has crucial importance both for individuals and for society as a whole; that it is most precious for its own sake as a right that inheres in every human being, but that it also constitutes a fundamental right whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed by other human rights.[2] The Right, according to the *United Nations Human Rights Committee*, is a right which concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.[3]

4. It is against this background, which emphasises the premium and supreme value that the law attaches to human life; and the duty cast upon every person not to cause the unnatural or premature death of another; that this Court approaches the circumstances of the death of the late Mr. Fletcher Masina, a person with albinism, who was killed on 24th May, 2016.

5. Mr. Fletcher Masina was a very good, hardworking and highly committed family man. He was married to one wife, Tabitha Fletcher Masina, and had four children. These five people, namely his wife and four children, were collectively the apple of his eyes. They were the world to him. This, indeed, is as much as he likewise meant to them. He was to them, the best husband and the best father, respectively. These facts were clearly evidenced by the testimonies that this Court heard in the course of the trial.

6. Then something terrible happened. It started like a normal, beautiful bright morning, that fateful 24th day of May, 2016 at Zintambila village in Ntcheu District. Mr. Fletcher Masina, as hardworking as ever, after having some breakfast, left with his wife for the garden (called a *dimba*

[2] Ibid.
[3] Ibid, para. 3.

in the vernacular ChiNyanja/ChiChewa). They worked out the garden together that morning.

7. After some time of hard work, as the time approached noon, Mrs. Tabitha Masina took leave of her husband, returning home to attend to other chores . Little did she know that this was the last farewell with her husband, the last time she would ever see him again, at least on this side of heaven.

8. Mr. Fletcher Masina continued to work the garden well into the afternoon.

9. That afternoon, however, not long after Mrs. Masina had left the garden, Mr. Masina's life was brutally ended, in cold blood, by a gang of rapacious murderers, the convicted persons herein. He was attacked and killed simply because he was a person with albinism. They killed him for his body parts. This murder therefore added to the number of other tragic murders of persons with albinism in this country which murders are the result of mythical supernatural, ritualistic, beliefs about the body parts of persons with albinism.

10. Being a person with albinism, it should be emphasised, is, and was for the deceased person herein, simply an immutable hereditary fact of life, the result of rare genetic mutation that results in, among others, failure by the body to produce melanin resulting in lack of normal skin pigmentation in such persons. This condition should never expose anyone, and should never have exposed the late Fletcher Masina, to danger or harm from other human beings. There is no magical or supernatural effect whatsoever about this biological fact of mutation. Whilst at it on this point, in passing, the Court is of opinion that Government, in the due discharge of its civic education responsibilities, should heighten awareness among the public on the folly of such misconceived mythical beliefs and the need for society to be vigilant in guarding against attacks on persons with albinism.

11. Back to the account of the ghastly conduct of the convicts herein, with the temptation and deep love of money, which turned out to be an illusory pursuit, when the convicted persons thought of Mr. Masina and saw him, apparently with some false promise of a bounty spinning in their criminal minds, they smelt blood. Seeing him conjured up illusions of quick riches in them. Consequently, on that fateful afternoon, they callously and barbarously attacked Mr. Masina in the garden, with crude weapons such as hammers, pangas and wooden rods, ruthlessly clubbing him to death and sadly leaving his wife widowed and his children orphaned. Their barbarous acts have outraged the collective conscience of their community, Malawians and the world at large. Their conduct is a classic example of the negation of the right to life that the people of this country and of the world have set out to safeguard.

12. The consequences of the convicts murderous acts on the family are indescribable. The little that this Court wishes to point out is that at the time of his death in 2016, the deceased person's oldest child was about 9 years old, and the youngest was only two years of age. A very young family indeed. The loss of a husband, and under such terrible and horrific circumstances, is a pain so deep and severe to fathom in words and in thought. Even more so is the loss of a father so early in life, and under circumstances such as the present ones. The story of the present matter is really a tragedy that breaks the heart.

13. Now, for the convicted persons' bloodletting and murder, Mr. Fletcher Masina's soul seeks justice. Mr. Masina's family seeks justice and they deserve justice. With Mr. Masina dead, members of his family are the direct victims of that grisly crime. Mrs. Masina testified in respect of sentence, pursuant to the provisions of section 261 of the Criminal Procedure and Evidence Code (CP &EC). She told the Court about how the death of her husband has negatively impacted the family, spinning them down into a sad vortex of deep poverty. She would prefer

that the Court imposes the death sentence on the convicts. Apart from the Masina's family, society also seeks and deserves justice.

14. Of the 11 accused persons who were initially charged for this offence, it were the 1st, 2nd, 3rd and 4th accused persons who were convicted for the murder of the late Fletcher Masina. Three of these convicts are now before the Court. One of the convicts regrettably passed away after conviction but before sentence could be meted out on him. The circumstances of his death remain rather unclear and this Court issued directions concerning the holding of an inquest into his death, under the Inquests Act (Cap. 4:02 of the Laws of Malawi) in its Judgment on liability in the present matter of 8th January, 2021. This Court re-emphasises the need for the said inquest to be conducted with speed.

15. The present decision on sentence is the decision that pronounces the convicted persons' most evident fate as a consequence of their criminality. Part of their fate was already inherently determined by this Court's pronouncement as to their guilt on 8th of January, 2021. That decision alone sealed their criminal record into the State's books of criminal convictions. A record of a conviction in a matter of this nature and gravity, a crime of heightened moral turpitude, already entails various legal consequences in the form of legal disabilities and disqualifications. Such disabilities and disqualifications are not part of the punishment for the offence. They are simply there as an expression of society's distrust and disdain to have persons of such proven criminal character participate in some of the society's most important undertakings or to assume some of society's most important roles. However, the most evident fate of the convicted persons herein, for purposes of the criminal law, lies in the sanction of the sentence which this Court now pronounces in the present decision.

16. To recap, the convicted persons herein were jointly and severally charged 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 charge averred that each of the persons in the present matter, with malice aforethought, on or about the 24th day of May, 2016, caused the death of Fletcher Masina (the Deceased person) at Zintambira Village in Ntcheu district. The deceased person, as mentioned earlier, was a person with albinism. As already stated, the three accused persons now in court, the convicts herein, along with the now deceased 4th accused person, were found guilty and convicted as charged.

17. In their submissions in mitigation of sentence, made on their behalf by their Counsel, the convicted persons herein argue that the Court should exercise leniency and consider imposing a lighter sentence. In particular, they urge that the Court should not impose the severest punishment conceivable for the murder that they committed. The maximum sentences, as prescribed under section 210 of the Penal Code, are death or life imprisonment.

18. Defence Counsel sought to remind this Court that the imposition of the death penalty in cases of murder is no longer mandatory, following the decision of the High Court in what they describe as the "*locus classicus*" case of *Francis Kafantayeni and others vs The Attorney General*, Constitutional Case No 12 of 2005, which was affirmed by the Supreme Court of Appeal in *Twoboy Jacob vs Republic,* MSCA Criminal Appeal No 18 of 2006.

19. I must quickly say that I have great admiration for these lofty decisions of the High Court and Supreme Court of Appeal, respectively, for their luminous character and their progressive human rights thrust. They bear testimony to the famous statement by Dr.Martin Luther King Junior, that "the arc of the moral universe is long, but it bends towards justice."

20. However, I feel that the time is perhaps now past for Counsel to continue citing these lofty and admirable decisions as authority for the present non-applicability of the mandatory death penalty for murder under Malawian law. It must be recalled that the provision that mandatorily imposed the death penalty for the offence of murder, namely section 210 of the Penal Code, was amended by the Penal Code (Amendment Act) No. 1 of 2011 with the effect that section 210 of the Penal Code now reads that "Any person convicted of murder shall be liable to be punished with death or with imprisonment for life." Further, section 27(2) of the Penal Code provides that "A person liable to imprisonment for life or any other period may be sentenced for any shorter term."

21. It therefore clearly appears, on the face of these provisions, that the Penal Code no longer imposes the mandatory death penalty for murder. It now gives the Court statutory discretion to either impose the death penalty, a life sentence or any shorter term. It is therefore otiose in my view, for Counsel to continue to seek to advise these Courts that the death penalty for murder is no longer mandatory in Malawi on account of the cases of *Francis Kafantayeni and others vs The Attorney General* and *Twoboy Jacob vs Republic.* The fact is that the death penalty for the offence of murder is no longer mandatory under statute. Case law is therefore no longer germane for that proposition. It seems to me that if anything remains to be said at all about the case law on this point, it should perhaps now be that the cases of *Francis Kafantayeni and others vs The Attorney General* and *Twoboy Jacob vs Republic* triggered Parliament to codify the abolition of the mandatory imposition of the death penalty for murder under the Penal Code.

22. It should be said, in passing, that it seems to me that the spirit and intent of Parliament was probably to abolish the mandatory imposition of the death penalty completely from Malawi's statute books. This is so considering that even under section 217A of the Penal Code

that prescribes the universal crime of Genocide, which offence is arguably the gravest of all crimes known to the law, the Court has still been given statutory discretion on whether or not to impose the death penalty. This discretion has been prescribed for the offence of genocide although, again arguably, any form that the offence of genocide might take should necessarily be more heinous than murder, considering that genocide involves the deliberate killing of a large number of people with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. Curiously however, Parliament preserved the mandatory death penalty for the political crime of treason under section 38 of the Penal Code.

23. Moving on to the arguments from the prosecution, Counsel for the State invited this Court to impose the death penalty on all the convicted persons. Counsel argued that the death of the deceased person herein was occasioned in the most callous of circumstances. They submitted that the attack on the deceased was unprovoked and premeditated. They invited the Court to consider that this death has had far reaching consequences not only on the deceased's family, but also on persons with albinism in Malawi who continue to live in fear. They submitted that in the premises, there is need for a sentence that is meaningful enough to send a lesson to these perpetrators and to would-be perpetrators.

24. State Counsel submitted that the deceased person was a hard working person who made a living out of farming; and that sadly the convicts herein killed him while he was tending to his crops at the *dimba*. They stated that by contrast, the convicts herein are lazy people who believed that they could get rich by killing a person with albinism and harvesting his body parts. They submitted that in the end, there is only one sentence which can reflect the revulsion that the society has on these barbaric killings- the death sentence.

25. Counsel for the State contended that although the convicts herein were first offenders, and whilst the 1st accused person pleaded guilty, the circumstances of the offence were so serious and aggravated as to completely eclipse the mitigating factors and that the death penalty is the only appropriate punishment.

26. The State cited a number of cases in support of the plea for the imposition of the death penalty. One of these was the case of *Two Boy Jacob v Republic* (above), where the deceased, the Appellant's 2nd wife, was killed by the Appellant in cold blood using a panga knife on suspicion that she had bewitched him so as to make him unable to have sexual intercourse with his first wife. The Supreme Court of Appeal upheld the death sentence for this cold blooded murder.

27. Another case relied on by State Counsel was *Binny Kalime Thifu vs. R, Criminal* MSCA Criminal Appeal Number 19 of 2007, where the Malawi Supreme Court of Appeal observed that the deceased had been killed in cold blood and the objective of the killing appeared to have been to remove certain body parts. State Counsel argued that the Supreme Court held that the death sentence was well merited in this case, despite the sentiments that maximum sentences are reserved for worst criminals who are still not yet born.

28. State Counsel also cited the case of *Republic vs. Yale Maonga*, Sentence Rehearing Case Number 29 of 2015, where the High Court meted out a Sentence of 45 years imprisonment on a convict who had hidden in the bush, ambushed the deceased, hacked him with a panga knife and robbed him.

29. In reply, Counsel for the convicted persons reminded the Court that the death penalty is only to be imposed in the "rarest of rare" cases. Defence Counsel cited the case of *Republic v Jamuson White*, Criminal Case Number 74 of 2008 (Unreported), which case was incidentally also cited by the State on the same point, where the Court emphasized that

the rarity of the circumstances in which the death penalty may be imposed are such that:

> The offence must have been committed in decrepit and gruesome circumstances, meticulously planned and intentioned and that the convict is highly likely to offend again to justify his total removal from associating with other persons even in prison. He must be a threat to society so much so that society would, without thinking twice approve of his elimination from planet earth. The motive for the killing must be heinous so as to cause a deep sense of [societal] abhorrence and condemnation that such human being does not qualify to live. I may put deliberate mass murders and serial killers in this category.

30. Counsel for the convicted persons also invited the Court to consider that the 1st accused person, Kenneth Moses had pleaded guilty, and that the 3rd accused person, Ulemu Mwangomba, had admitted taking part in the offence and that he had been cooperative with the State.

31. The Court would like to begin by agreeing with the State that the offence herein was not only very serious, but that it was committed in a very heinous manner. I have already highlighted the gravity of the circumstances of the offence in earlier passages of this judgment. It is therefore important that this Court must impose sentences on the convicted persons herein that are meaningful and that send a clear signal to society that such crimes will not be tolerated and indeed that they have no place in this country or anywhere else. The sentence must send a clear signal that these. Courts are intent on ensuring that the right to life of every person in this country is respected and protected,

and that violations will not go unpunished. Thus, whilst section 340(1) of the Criminal Procedure and Evidence Code (CP & EC) (Cap. 8:01) provides, in essence, that a first offender should ordinarily be given a non-custodial term; the gravity of the circumstances of the present case compel the Court to move away from the non-custodial scheme envisaged under section 340 of the CP & EC. A non-custodial term in a case such as the present would represent a clear travesty of justice.

32. In the case of *Republic -vs- Willard Mikaele,* Homicide Case No. 238 of 2018, a case involving the brutal killing of a person with albinism, Kamwambe J stated that:

> We are not here talking about this person with albinism alone, since this practice has degenerated into an epidemic without any tangible solution yet. It would be a mockery in such cases for one to even think of a short sentence…This case would not attract leniency on the ground that the convict is a first and young offender due to its special and hideous facts.

33. This Court, on this point, therefore assumes the same position as that adopted by Kamwambe, J in *Republic -vs- Willard Mikaele.*

34. I also agree with the remarks of Kenyatta Nyirenda, J in the case of *Republic vs. Makolija*, Sentence Rehearing Cause No. 12 of 2015 (HC, PR) where the learned Judge stated that "the maximum punishment [of death] must be reserved for the worst of offenders in the worst of cases." It is apparent that this position also substantially reflects the position taken in *Republic v Jamuson White* above, and a very steady stream of jurisprudence from the High Court of Malawi.

35. The Court recalls the decision of the Supreme Court of Appeal in the case of *Chimenya v Republic*, MSCA Criminal Appeal No 8 of 2006

where the Court stated that "courts will certainly wait for appropriate circumstances before imposing the death penalty." The Supreme Court of Appeal, in *Chimenya v Republic*, adopted with approval the decision of the Supreme Court of India in the case of *Rajendra Prasad & Others v State of Uttar Pradesh*, (1979) AIR 916 (SC) where the Court stated that:

> the sacrifice of a life is sanctioned only if otherwise public interest, social defence and public order would be smashed irretrievably…One stroke of murder hardly qualifies for this drastic requirement, however gruesome the killing or pathetic the situation, unless the inherent testimony oozing from that act is irresistible that the murderous appetite of the convict is too chronic and deadly that ordered life in a given locality or society or in prison itself would be gone if this man were now or later to be at large. If he is an irredeemable murderer, like a bloodthirsty tiger, he has to quit his terrestrial tenancy. Exceptional circumstances, beyond easy visualisation, are needed to fill this bill.

36. The Indian Supreme Court went on to provide further elucidation on circumstances in which it might become justified for a Court to impose the death penalty. The Court stated that:

> if a man is a murderer, so hardened, so blood-thirsty, that within the prison and without, he makes no bones about killing others or carries on a prosperous business in cadavers, then he becomes a candidate for death sentence…if he is far too hardened that it has become his second nature to murder, society cannot experiment with correctional strategy, for,

> when he comes out of jail, he may kill others. Such an incurable murderer deserves to be executed under the law as it stands.

37. The Supreme Court of India concluded its narrative on this matter as follows:

> A paranoid preoccupation with the horror of the particular crime, oblivious to other social and individual aspects, is an error. The fact that a man has been guilty of barbaric killing hardly means that his head must roll in the absence of proof of his murderous recidivism, of incurable criminal violence, of a mafia holding society in ransom and of incompatibility of peaceful co-existence between the man who did the murder and society and its members. We may constellate some of the principles. Never hang unless society or its members may probably lose more lives by keeping alive an irredeemable convict. If rehabilitation is possible by long treatment in jail, if deterrence is possible by life-long prison terms, capital sentence may be misapplied.

38. Thus Malawi Supreme Court of Appeal, in the case of *Chimenya v Republic*, has therefore adopted with approval this position of the Indian Supreme Court of Appeal in *Rajendra Prasad & Others v State of Uttar Pradesh*, which places the threshold for invoking the death penalty on a very high pedestal. In the present case, it is beyond question that the murder was exceptionally gruesome. It is without doubt that the actions of the accused persons were desperately pathetic and inexcusable.

39. The question however is whether it can be said that when all the circumstances of the present case are considered, the accused persons herein can be said to be persons who have a murderous appetite which is too chronic, deadly and unquenchable to the extent that ordered life in their village and surrounding areas, or in society at large or indeed in prison itself would be gone if they are not put to death. Put differently, we need to answer the question whether enough has been said to justify the lethal judicial verdict in the instant case and for the convicts to be made to permanently exit their earth's terrestrial tenancy. Has enough been said to validate the wiping out of their lives, the obliteration of the convicted persons' existence? These questions are asked bearing in mind that the death penalty is final, absolute and irrevocable.

40. The Court holds the view that the murder of Mr. Fletcher Masina was incontestably heinous. It was one of the most vicious and brutal killings conceivable. Further, such killings have caused too much anguish and anxiety among persons with albinism. It is unacceptable that persons with albinism should live a life of constantly looking over their shoulders; or those with loved ones including children with albinism living under the daily torment and distress as to what may happen to their loved ones at any given time. It is therefore imperative that when punishing offenders who commit crimes of this nature and magnitude, courts must fully appreciate the need to ensure public safety and peace of mind.

41. However, the horror of a crime such as the instant one should not make us oblivious to other social and individual aspects as sentencing considerations. The goodness and justness of society is to be judged by how it treats those deemed to be the worst among its fold.

42. This Court agrees with the proposition that in capital offences such as the instant one, if deterrence and protection of society is possible by the imposition of life-long prison terms, then such

sentencing approach should be preferred and the death penalty should be avoided.

43. In the instant case, as vile and as gravely heinous as the offence herein was, I do not form the view that the convicted persons herein are incurably and irredeemably given to a life of murderous criminal violence to the extent that their continued lives are incompatible with human existence on earth. I do not form the view that the accused persons are far too hardened and so ravenously and chronically murderous that it has become their second nature to kill others, and that society cannot experiment with the strategy of imprisonment as a proper scheme of punishment.

44. In the premises, this Court comes to the conclusion that the just and appropriate sentence for all the three convicted persons herein is life imprisonment.

45. I must emphasise that the Court does not come to the conclusion that life imprisonment is appropriate under the circumstances because it views the death penalty as a more serious punishment than life imprisonment. In their words, the Court believes that by imposing their sentence of life imprisonment, it is imposing one of the two alternative maximum sentences applicable for the offence of murder in this country. There Court is aware that there is philosophical debate as regards which punishment between a life-long prison term without possibility of release and the death penalty is more serious. The Court is further aware that this is a value laden question that may not receive a universally uniform reply. The Court however simply rests in the thought that considering the language of the statute, both of these sentences are couched as alternative maxima in the imposition of. Punishment for the offence of murder.

46. The reasoning of this Court is that courts are to be slow in imposing the death penalty in view of the fact that the death penalty is

final, absolute and irrevocable. It takes away from the convict any possibility of an opportunity for evidence of innocence or other very substantial mitigating circumstances to emerge which might lead to a review of the punishment by relevant authorities. To my mind, the finality and irrevocability, rather than the supreme severity of the death sentence is what unquestionably qualifies for its exceptional character and why it should only be imposed in the rarest of the rare circumstances, and where the Court is indubitably certain about the need for doing so .

47. Indeed, it has been argued elsewhere that a person sentenced to a term of life-long imprisonment arguably suffers a sterner punishment because such a sentence entails only hopeless, painful years from day to day, from month to month, stretching out forever and in agony for the sentenced convict. See “Imprisonment Worse than Death,” *Lawyers Scrap Book 2, No. 3* (January 1912): 155-157.

48. According to Robert Johnson and Sandra McGunigall-Smith, in their work “Life without Parole, America's Other Death Penalty: Notes on Life under Sentence of Death by Incarceration,” *Prison Journal* 88, No. 2 (June 2008): 328-347-350, at p. 328:

> Life without parole is sometimes called…death by incarceration, as these persons are, in effect, sentenced to die in prison. Indeed, it is argued here that the sentence of life in prison without the possibility of parole can be equally as painful as the death penalty, albeit in different ways. The sentence can thus be thought of as “our other death penalty.”

49. They continue to state at page 329 that:

> These prisoners are physically alive, of course, but they live only in prison. It might be better to say they

> “exist” in prison, as prison life is but a pale shadow of life in the free world. Their lives are steeped in suffering…life without parole does not pose a special risk to public safety and is a sanction of great severity, arguably comparable to the death sentence in the suffering it entails.

50. Therefore, in concluding that the life sentence is the most appropriate sentence in the present case, the Court is recognising that the circumstances in which the offence was committed were so heinous and aggravated as to attract punishment at the apex of the sentencing continuum. The murder was executed in concert with shocking premeditation, brutality and cruelty; and this against a defenceless person with disability. The attack was so brazen and insensate. Under such circumstances as the present, retribution and deterrence are the sentencing purposes that come to the fore in the sentencing enterprise and the mitigating factors advanced by the convicts must recede into the remote background. Put differently, the Court forms the distinct view that the aggravating factors in the present case far outweigh the mitigating factors to the extent that they totally eclipse the mitigating factors, including the guilty plea by the 1st accused person. Courts are entitled to take this approach where necessary. For instance, in the case of *Republic -vs- Willard Mikaele* (above), Kamwambe J stated that:

> It is admitted that the convict is a first offender and he pleaded guilty…Such a plea of guilty is a hopeless one meant to resign to his fate after killing an innocent person. This court would not exercise any lenience on this basis.

51. However, in view of the onerous considerations outlined above for the imposition of the irrevocable penalty of death, I still have not found

justification for the death penalty to be imposed in the instant case as an alternate maximum sentence.

52. The convicted persons must therefore spend the remainder their lives under incarceration, in prison, with hard labour, until when they shall die therein. Accordingly, I hereby sentence each of the three convicted persons herein, namely; Kenneth Moses, Steven Lipiyasi, and Ulemu Mwangomba to life imprisonment pursuant to the provisions of section 210 of the Penal Code.

53. Before closing, the Court wishes to mention, by way of reiterating what it already said in the judgment on liability, that the Court was not convinced that the investigations in the present matter were sufficiently exhaustive. It seems to this Court that if the State truly wishes to get to the bottom of these crimes, there is need for the State to seriously look into the credibility of the claims that the 1st and 4th accused persons made in Court with regard to why they decided to kill the deceased person herein. Regrettably, the 4th accused person already died under prison custody at Ntcheu in circumstances that remain cloudy at present, and in respect of which this Court has directed an inquest. These however, are the Court's observations simply made in passing and the State's investigating and prosecuting authorities will exercise their informed judgment on the matter.

54. Finally, the Court wishes to mention that it is mindful that the State President has powers under section 89(2) of the Constitution, which powers are akin to prerogative powers, to pardon convicted offenders, grant stays of execution of sentence, reduce sentences, or remit sentences. The Court however wishes to end by expressing the strong view that persons with albinism in this country, the victims herein and society at large would be most at peace if the accused persons herein were never to benefit from the Presidential exercise of any of these powers, and therefore hopes that successive State

Presidents will share in this view. In other words the Court forms the strong view that, all things being constant, the justice of the present case will lie in the life sentences imposed herein applying without the possibility of release and that the convicts herein are to die in prison custody.

55. Thus renders the judgment of the Court.

Pronounced in open Court at Zomba this 19th day of April, 2021.

R.E. Kapindu, PhD

JUDGE