



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL CASE NUMBER 20 OF 2012

BETWEEN:

THE REPUBLIC

AND

PETER JUMBE

ACCUSED

CORAM: JUSTICE M.A. TEMBO,

Mtonga, Counsel for the State

Magombo, Counsel for the Accused

Chanonga, Official Court Interpreter

SENTENCE

This is the sentence following the conviction of the accused person after a full trial. The accused was charged with the offence of murder contrary to section 209 of the penal code but was convicted of the lesser offence of manslaughter contrary to section 208 of the Penal Code.

The particulars of the offence are that on or about 14th August 2010, the accused unlawfully caused the death of Masekesa Maida at Luambwe village in the area of Traditional Authority Kuntumanji, Zomba district.

The defendant submits that he should be sentenced to term of years imprisonment.



The maximum sentence for manslaughter is life imprisonment as per section 211 of the Penal Code.

The State submitted that the appropriate sentence in the circumstances of this matter is imprisonment for a term of years. The State submitted that the defendant be imprisoned for 15 years.

The defendant correctly submitted that the Court by virtue of section 3211 of the Criminal Procedure and Evidence Code is allowed before passing sentence, to receive such information or evidence as it thinks fit, in order to inform itself as to the proper sentence to be passed. Such information or evidence may include, in addition to the evidence of the convicted person or from the prosecution, evidence by or on behalf of the offence and any relevant reports that may enable the court to assess the gravity of the offence.

He submitted further that apart from the fact that the court is at liberty to hear such evidence in mitigation before arriving at an appropriate sentence, the court is equally guided by legal principles.

And further, that some of the legal principles that guide the Court include the principle that the maximum punishment should be reserved for the worst of offenders in the worst of cases. See *R v Mabvuto* Criminal Case No. 66 of 2009 (unreported). And that in this regard, Courts, as mentioned elsewhere, exercise judicial discretion in sentencing. Further that in doing so, Courts consider the facts and circumstances of each case individually. He submitted that the Supreme Court of Appeal thus had to say

We have carefully considered the above passages and feel persuaded to agree that offences of murder differ, and will always differ, so greatly from each other that we think it is wrong and unjust that they should attract the same penalty or punishment. *Twoboy Jacob v Republic* MSCA Criminal Appeal No 18 of 2006 (unreported).

The defendant further submitted that, in agreeing with the above proposition, the High Court having agreed with the position that the death sentence should be reserved for the worst cases the Court noted that when sentencing convicts, in as much as sentences ought to be meaningful to convicts Court's need not only focus on the convict's degree of liability or the ghastly³ manner in which the offence was

committed. Instead, the Court should also take into consideration amongst others the personal and individual circumstances of the offender as well as the possibility of reform and social re-adaptation of the convict. Thus it is an accepted legal principle that sentences should befit the offender and in this respect, the Court should take into consideration mitigating factors that may avail the convict. See *Republic v Matimati* Criminal Case No 18 of 2007 HC (unreported).

The defendant further submitted that as to what constitutes mitigating factors, Courts agree that the list is not exhaustive when consideration is given to each case on its own. However, amongst others, Courts will take into consideration such factors as the age of the convict both at the time of committing the offence as well as at the time of sentencing. It is the position that the law generally favors relatively young or old people to protect them from being in custody for longer periods. See *R v Ng 'ambi* [1971-1972] ALR Mal 457

The defendant then submitted that similarly, courts will always be slow at imposing long prison terms for first offenders where necessary. The rationale being that it is important that they avoid contact with hardened criminals who in turn negatively affect their process of reform as well as their reintegration into society after serving their just punishments. See *R vs Chikazingwa* [1984-86] 11 MLR 160.

He further submitted that court's will also take into consideration the time already spent in prison by the convict and will usually order that the sentence takes effect from the date of the convict's arrest thus factoring in the time already spent in the prison. Courts will, however, discount this factor if the time spent was occasioned by the convict themselves i.e. where they skip bail or because of unnecessary adjournments. See *Mu/era v Republic* [1971-1972] ALR Mal 73.

The defendant submitted that another important decision is that of *Republic v Matimati* in which the Court highlighted that in mitigation courts have also to look into the personal and individual circumstances of the offender as well as the possibility of reform and social re-adaptation of the convict. Arguably, this may relate to the convict's individual circumstances at the time of committing the offence as well as at the time of sentencing i.e. their mental state; health; hardships, etc. Furthermore, the Court will take into consideration the manner in which the offence was committed i.e. whether an offensive weapon was used or not; as well

as consider issues of intoxication at the time of committing the offence even though not successfully pleaded in defence. See **Winston Ngulube & another vs The Republic** MSCA Criminal Appeal No. 35 of 2006 (unreported)

The defendant noted that as explained earlier, the list is not exhaustive. Instead, in *The Republic vs Keke* Confirmation Case No. 404 of 2010 (unreported), Mwaungulu J. (as he was then) explained that sentencers must develop from their own experience and from appellate Courts the peculiar aggravating and mitigating circumstances generally and in specific offences. He went on to state, amongst others, that the following factors may mitigate: being a first offender, age, duress, provocation as well as lesser participation in the crime.

The defendant then submitted that in the present case, there is no dispute that a precious life was lost under appalling circumstances in the sense that his death was caused by assaulting the deceased with a weapon taking the form of a metal bar. Thus there was use of a dangerous weapon.

However, that this Court is called upon not to merely look at the irreparable loss of life and the decrepit circumstances of the death itself but that as it arrives at an appropriate sentence for the convict it should also consider any other relevant factors that may work in mitigation of the sentence to be meted out.

The defendant submitted that he is a first offender. That he is currently aged 31 years old and considering the fact that the offence herein occurred in August 2010, at the time when he was being arrested he was very young as he was aged about 24 years old. Thus at the time of his arrest, he had lived a blameless life for a good twenty four years. He urges this Court, therefore, to take into consideration the fact that he is a first offender as well that he was relatively youthful at the time of committing the offence and well remains fairly a young adult at the time of sentencing. And that it is in such cases that the law encourages the Courts to consider terms of imprisonment that are not too long.

The defendant submitted furthermore, that he was arrested not long after the offence was committed and that he in fact surrendered himself when he heard about the death of the deceased and he cooperated throughout the process of investigation. He remained remanded up to the time when he was released on bail some time on a date not recalled in 201⁵. Since then he has been on bail and

complied with his bail requirements to the time he was being convicted. And that this should also be taken into consideration in mitigation and that the Court should considering a sentence that runs from the date of his arrest. This Court wishes to note that the defendant appears to have absconded his bail as he was nowhere to be found and had to be arrested to appear in court for his judgment.

The defendant further submitted that the law also allows for the making in mitigation a plea that the convict be considered leniency as he purportedly acted in self defence even though the defence itself was not successfully established at trial. The defendant contends that in the present case, the finding of fact shows that the deceased was aggressive on the material day and in an attempt to save himself, the convict acted in the belief of defending himself from the imminent danger posed by the charging deceased person. He further contended that in as much as the Court did not find for him that he acted as such because of reasons of proportionality and reasonableness of the force used, the Court is still not excluded from taking it into mitigation that he mistakenly thought he was acting in self defence.

The defendant further stated that the class of mitigating factors being an open one, he also prays to the Court that it takes into consideration the fact that at trial he sought to plead guilty as an expression of his remorse save for the fact that the facts were disputed. Thus he prays that even though the plea of guilty was not successfully entered save for the technicality, the Court should still consider the remorse the convict expressed by admitting to killing the deceased.

The defendant stated that he is also a person who is capable of reform and he prays that as he serves his sentence, focus should not only be placed on his punishment but mainly on his reformation and reintegration. As of fact, in the village he has been a family man with five children and earned a living as a local maize and rice farmer to fend for his family as well as parents. Apart from this, he was in the village the chairperson of Mpheta Rice scheme in the village overseeing the running of a rice mill, apart from also being a member of the Borehole committee which ensures the provision of safety and portable water. All these go to show that even whilst living in the village, the defendant was a responsible community member and it is submitted that this proves his capacity to reform and definitely reintegrate in society when given a second chance.

The defendant takes due cognizance of the fact that the sentencing process is a balancing act which aims at serving the interests of the justice system as may be reflected in the interests of the victims family; the offender; and society at large. Such a process is indeed not an easy task but that the Court in doing so exercises its discretion judiciously. Thus the ultimate discretion lies with the Court.

Further to the foregoing, the defendant takes due cognizance of the fact that a valuable life was lost and such loss being irreparable. He takes further recognition that from the Courts finding of fact, a weapon was used in assaulting the deceased to his death. However, he implores the Court not to only focus on the ghastly manner in which the offence was committed but rather that as the Court arrives at a meaningful term of punishment, the Court should put primary focus on the defendant's reformation and rehabilitation.

It is the defendant's submission that he is not the worst of offenders deserving the maximum penalty for manslaughter which is a term of imprisonment for life. Rather, it is his prayer to the Court that as it arrives at a meaningful sentence the Court should consider meting out a term of imprisonment limited to a number of years befitting the circumstances of the case as well as taking full consideration that he was convicted of the offence of manslaughter.

This Court entirely agrees that the maximum sentence of imprisonment for life is reserved for the worst offence and worst offender. This Court has to balance the mitigating and aggravating factors herein before arriving at an appropriate term of years of imprisonment.

The obvious aggravating fact is that a life was taken by use of a dangerous weapon in the form of a metal bar.

Although the defendant acted disproportionately to the occasion and failed to establish the defence of self defence he mistakenly believed he was acting in self defence and this calls for some leniency in the punishment.

The defendant is indeed a first offender who deserves a second chance in life. He is also quite youthful and must be given chance to reform and be a useful member of the society and should ordinarily be visited with a very long prison term. He

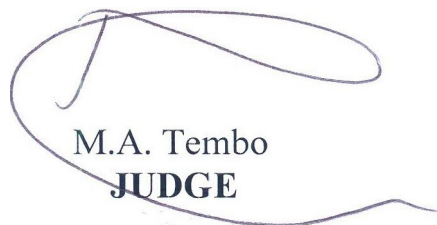
f...

clearly has shown that he is a responsible member of society since the incident herein.

This Court has noted the trends in sentencing in cases of manslaughter where excessive force was used and the defence of self defence was therefore precluded. Such cases include those cited by the State of *Republic v Mathuso* criminal case number 27 of 2008 in which a sentence of 10 years imprisonment was imposed on a 23 year old for manslaughter. The other one is that of *R v Tepeka* criminal case number 29 of 2009 in which a sentence of 14 years imprisonment was imposed on a 23 year old for manslaughter involving a stabbing using a bicycle spoke. The other one is that of *Republic v Newille* criminal case number 78 of 2008 in which a sentence of 14 years imprisonment was imposed on a 26 year old for manslaughter involving a knife stabbing. The other one is that of *Republic v Manyowa* criminal case number 78 of 2010 in which a sentence of 10 years imprisonment was imposed for manslaughter involving a knife stabbing. The other one is that of *Republic v Matola* criminal case number 72 of 20008 in which a sentence of 15 years imprisonment was imposed for manslaughter involving a knife stabbing. And that of *Paison v Republic* [1998] MLR 302 (SCA) where a sentence of nine years imprisonment was imposed for manslaughter involving a stabbing with a knife.

In the present circumstances after considering the aggravating and mitigating factors and that the defendant spent about a year in custody before being released on bail this Court sentences the defendant to serve a sentence of nine years imprisonment effective from the date he was re-arrested to appear for the judgment.

Made in open Court at Zomba this 3rd May 2016.



M.A. Tembo
JUDGE