



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
SITTING AT MULANJE MAGISTRATE COURT
CRIMINAL CASE NO. 364 OF 2010

THE REPUBLIC
-AND
- JOSEPH MULIYA

CORAM: **HON. JUSTICE M.L. KAMWAMBE**
Miss Banda & Mr Lemucha of Counsel for the State
Mr Chunga & Miss Kumwenda of Counsel for the Accused
Mr Manda, Official Interpreter
Mrs Chiume, Court Reporter

SENTENCE

Kamwambe J

Joseph Muliya was convicted on 12th day of May 2011 of the offence of manslaughter after killing his brother-in-law. Neither the State nor the Defence has furnished the court with submissions despite several reminders. I have just decided to proceed with sentence in the absence of such submissions. I know this is a disservice to the convict and the court. Such practice should not be encouraged at all.



The facts of the case are that on 6th August, 2009 at around 7.00 pm at Nkuthuwa village, T.A Nazombe, Phalombe District, the deceased, **Wilson Bokosi**, went to her sister's house at **Nkuthuwa village** with a family grudge against her. The sister's husband, the convict herein, was around. The deceased was carrying a panga at the bicycle carrier. When he arrived at the sister's place, he torched the grass thatch of her house. The fire was extinguished by her daughter. Then he started fighting his sister. The convict appeared and he intervened and started fighting the deceased. As they tussled, the convict took a pole (mzati) that was used to support the house and used it to hit the deceased on the head. The deceased collapsed. By this time her sister had already left to report to the Chief about the intruder. The convict then got hold of a pestle and used it twice to hit the already subdued intruder in the head. The intruder lay there lifeless while the convict locked himself inside the house leaving the teenage girls, 10 and 14 years old watching over the deceased in the night until people came. The deceased died of head injuries. The convict was convicted of manslaughter on the ground of using excessive force while in defence of his wife and property.

Manslaughter is a serious offence as the maximum sentence of life imprisonment speaks for itself. Even if the offender may be a first offender he deserves a severe punishment. There was no need for him to fetch a pestle and start hitting a man who otherwise was already lying down prostrate and subdued. This is sheer cruelty and being vengeful. But when he was hitting the deceased with a pestle the deceased may have died already. However, I warn myself against speculation.

It is stated in **OPP v Chipaye & Others** 1966- 1968 ALR Mal. 43 at page 50 that 'where a person is attacked in circumstances which entitle him to defend himself, and in defending himself, inadvertently

kills his assailant by using a lethal weapon or by persisting in his defence with more force than necessary, he will be guilty of manslaughter and not murder'. Also see **The Republic v Enock Chipembere** Criminal Case No. 232 of 2007 (unreported) in support. It applies in situations of self-defence, in defence of another or in defence of property under section 17 of the Penal Code which follows common law principles.

I have considered other cases such as **R v Tepeya Katimbe** Criminal Case No. 29 of 2008 in which a sentence of 14 years was meted, **R v Joh n Edwin Tangwe** Criminal Case No. 86 of 2012 in which 72 months imprisonment was meted, and **R V Leonard Chinguwo** Criminal Case No. 53 of 2008 in which a sentence of 8 years was meted; and having considered the severity of convict' s actions of killing and the resultant conduct of locking himself in the house with no regard of the deceased's condition, I am prompted to sentence him to 18 years imprisonment from date of arrest the 6th August 2009.

Pronounced *in Open Court this 12th day of October, 20 16 at Mulanje.*



M.L. Kamwambe

JUDGE