IN THE SUPREME COUR OF ZAMBIA Appeal No. 12 of 2000

AT NDOLA

(CRIMINAL JURISDICTION)

B E T W E E N:

ELIAS MULENGA Appellant

AND

THE PEOPLE Respondensdt

CORAM: Ngulube CJ., Chirwa and Chibesakunda JJs

On 6th June, 2000

For the Appellant, in person.

For the Respondent Mr. D.M. Mupeta, Senior State Advocate.

J U D G M E N T

Chibesakunda J. delivered the judgment of the court.

In this appeal the appellant was convicted of the offence of murder contrary to Section 200 of Cap 87 of the Laws of Zambia. The particulars were that the appellant on 6th July 1997 murdered his wife Grace Kamwazya at Masaiti in Ndola District of the Copperbelt Province of the Republic of Zambia.

The Prosecution evidence which was accepted by the trial court is that on 6th July 1997 the appellant who was a polygamist met the deceased at a bar called Kwasa kwasa, where they had some drinks and a quarrel arose between the two resulting in the appellant beating the deceased. PW5 who was in the bar advised the appellant not to go to the deceased's house. But PW5 later on in the night saw the appellant coming from the direction of the deceased's house, which house was at the time engulfed with fire. The appellant's nine-year-old grandson narrated to the court how the incident happened resulting in the death of the deceased. He testified that the appellant came to the house and asked him to get out of the house whilst he locked in the deceased who was at the time pleading with the appellant to be allowed to get out of the house. The appellant then set the house on fire after locking the deceased in. The deceased was crying for help whilst the grandson sat powerlessly in the little hut watching his grandmother being burnt to death. The trial court convicted the appellant of the offence rejecting his explanation that he was not there at the time the deceased was being burnt.

Before us the appellant has not argued against conviction. He has urged this court to upset the sentence, which was mandatory on the grounds that he was acting under the influence of beer. He has submitted that they

drunk from 1900 hours to 0300 hours in the morning. This court considered the argument advanced by the appellant. In our view there was overwhelming evidence on which the trial court convicted the appellant. He has urged us to take into account his state of mind that he was incapable of forming an intention to kill. Against that argument we have taken into account what the nine-year-old grandson said about the details of preparation before the appellant set the house on fire. These details negative his plea that he was incapable of forming an intention to harm or cause grievous bodily harm to the deceased. We, therefore, reject his argument. The appeal therefore, has no merit. We dismiss the appeal and confirm the sentence.

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M.M.S.W. Ngulube
CHIEF JUSTICE

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D.K. Chirwa
SUPREME COURT JUDGE

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L.P. Chiebesakunda
SUPREME COURT JUDGE