

**IN THE SUPREME COURT OF ZAMBIA      SCZ APPEAL Nos. 44, 45, 46 & 47 of 2000**  
**HOLDEN AT KABWE**  
**(CRIMINAL JURISDICTION)**

**JOHN MULENGA**

**MOSES KATEBE**

**WILSON CHIPILI**

**DAN MPUNDU CHUSU**

**APPELLANTS**

**Vs**

**THE PEOPLE**

**RESPONDENT**

**Coram: Sakala, Acting D.C.J., Chirwa and Chibesakunda, JJS**

**8<sup>th</sup> August 2000**

**For the Appellants: Mr. A.M. Bwalya, Senior Legal Aid Counsel**

**For the Respondent: Mr. J. Mwanakatwe, Principal State Advocate**

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**J U D G M E N T**

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**Chirwa, J.S. delivered the judgment of the court..**

The appellants pleaded guilty to three counts of manslaughter contrary to Section 199 of the Penal Code Cap 87 of the Laws of Zambia and were sentenced to life imprisonment on each count from the date of their arrest. They have now appealed against sentence only.

The facts of the case are that the 3 deceased persons were on patrol to enforce the ban on fishing. When they reached the fishing camp where the appellants lived they were attacked by the appellants and other villagers saying that they should not be stopped from fishing as that is from where they earn a living. In the process, one of the villagers was shot dead and in retaliation the appellants and other villagers brutally killed one Hurbert Mbao, the subject of the 1<sup>st</sup> count, Ben Mwape, the subject of the second count and Weston Sikapizye a victim on the third count.

Having pleaded guilty to these charges of manslaughter, the learned trial Judge took the view that these were brutal killings and that the offence was committed in anarchy

manner and that the circumstances warranted the maximum sentence of life imprisonment. In arguing this appeal, against sentence, Counsel for the appellants has submitted that the learned trial Judge misdirected himself in sentencing the appellants to life imprisonment in that he did not consider that the appellant pleaded guilty and that they were first offenders. He also submitted that the appellants have learned their lesson in prison and taking into account the circumstances of the case, the sentence of life imprisonment should come with a sense of shock to this court.

We have considered the appeal taking into account that any public officer in execution of his duties must be protected against the unbecoming behaviour of the members of the public. We do concede that in sentencing the appellants the Judge said:

"I take into account the circumstances in which this murder was committed".

Having accepted this charge of manslaughter the learned trial Judge should have, on sentencing the appellants, focused his attention to this charge of manslaughter. We take into account the manner in which the killings were done more or so in that the officers killed were enforcing the law. We also take into account that credit should be given to those people who plead guilty as they save the court's time.

Tampering justice with mercy we allow this appeal. The sentence of life imprisonment is set aside and in its place we sentence each of the appellants to 30 years imprisonment with hard labour with effect from their dates of arrests.

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**E. L. SAKALA**

**ACTING DEPUTY CHIEF JUSTICE**

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**D.K. CHIRWA**

**SUPREME COURT JUDGE**

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**L.P. CHIBESAKUNDA**

**SUPREME COURT JUDGE**