IN THE SUPREME COURT OF ZAMBIA **SCZ JUDGMENT NO. 13 OF 2002**

HOLDEN AT KABWE **APPEAL NO. 15 OF 2001**

(CRIMINAL JURISDICTION)

B E T W E E N:

NOAH KAMBOBE **APPELLANT**

VS

THE PEOPLE **RESPONDENT**

CORAM: Ngulube,CJ, I.C. Mambilima, P. Chitengi, JJs

On 16th April, 2002.

For the Appellant: **Mr. M. Kabesha, Kabesha & Co. on a pro bono brief from the Law Association of Zambia**

For the State: **Mrs. J.C. Kaumba, Deputy Chief Principal State Advocate**

JUDGMENT

Ngulube, CJ delivered the judgment of the Court

The appellant pleaded guilty to a charge of manslaughter. The particulars were that, on 26th March 1995 at Lusaka jointly and whilst acting together with somebody else he unlawfully caused the death of Maria Kakangu.

The facts were that the appellant and another had gone on a drinking spree and on their way back, without any provocation they came across Maria

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Kakangu who was 60 years old and assaulted her. In the process, they twisted her neck and she died.

The learned trial judge took an extremely dim view of the facts and especially the killing of an old lady by a young man. After a lengthy lecture running to several pages, the learned trial judge decided to do something unusual and novel, namely to keep the appellant in custody until he had reached the age of the deceased. For that purpose he subtracted the appellant's age from that of the deceased and came up with a sentence of 32 years imprisonment with hard labour (I.H.L.).

On behalf of the appellant, counsel has argued that the sentence was excessive and did not reflect the leniency which should be accorded to a first offender who pleads guilty. That was a valid complaint. Counsel has also complained that the period already spent in custody was not taken into account when this sentence was imposed. Again that is a valid point. Finally, counsel has complained about this novel principle of sentencing and he has pointed out the possible absurd results if a younger victim were involved. We agree with that submission as well. We do have to say that the sentence of 32 years induced a profound sense of shock. It was wrong in principle and certainly does not reflect any credit for the plea of guilty. In addition, the appellant was fairly youthful and the circumstances surrounding the offence showed that there was drinking and drunkenness.

The facts recited which were very brief, did not justify the very dim view taken and certainly they did not justify the new formular which we disapprove of for sentencing those who kill others. The formular has no support in principle, in practice, or in the law. It was without precedent and we disallow it as a precedent. The result in this case was that it produced a truly shocking sentence.

We allow the appeal against sentence and in its place we substitute what we consider to be more appropriate. The appellant will serve ten (10) years imprisonment with hard labour with effect from 4th June 1995.

M.M.S.W. Ngulube,
CHIEF JUSTICE.

I.C.M. Mambilima,
SUPREME COURT JUDGE.

P. Chitengi,
SUPREME COURT JUDGE.