IN THE SUPREME COURT OF ZAMBIA **APPEAL NO. 8 OF 2007**

HOLDEN AT KABWE AND NDOLA

(Criminal Jurisdiction)

BETWEEN :

MARY KALENGA	**APPELLANT**
VS	
THE PEOPLE	**RESPONDENT**

CORAM: Sakala, CJ., Silomba and Mushabati, JJS.

On 7th August, 2007 and 5th September, 2007.

For the Appellant: N. Chanda Nicholas of Chanda and Associates
For the Respondent: P. Mutale – Principal State Advocate

J U D G M E N T

Mushabati, JS., delivered the Judgment of the Court.

Cases referred to:

1. *Moses Mwiba Vs. The People [1971] Z.R. 131*
2. *Benua Vs. The People [1976] Z.R. 13*

Legislation Referred to:

Penal Code, Cap. 87 - S. 199.

This is an appeal against sentence only. The appellant was convicted of manslaughter contrary to section 199 of the Penal Code by the High Court sitting at Lusaka, on her own confession and admission of facts. She was sentenced to five years simple imprisonment.

The Particulars of offence alleged that Mary Kalenga, on the 31st day of August, 2006, at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, did unlawfully cause the death of Leonard Mumba Milambo.

The only ground of appeal was that ***the learned trial judge erred on principle of sentencing when he imposed the sentence of 5 years, on the appellant without having regard to the fact that she was a first offender and as such ought to have exercised some degree of leniency and by failure to take into account the fact that she had readily pleaded guilty.***

In sentencing the appellant, the trial judge did not assign any reasons why he imposed a sentence of 5 years imprisonment against the appellant.

The learned counsel for the appellant filed brief written heads of argument which he buttressed with oral submissions.

The gist of Mr. Chanda's arguments was that a plea of guilty must be taken into account by the court when sentencing an offender. Failure by the trial court to do so amounted to an error in principle and on appeal the sentence ought to be interfered with by way of reduction. In this regard, he cited some decisions of this Court namely ***Moses Mwiba Vs. The People (1) and Benua Vs. The People (2).***

As we have already said above, the learned trial judge in the court below did not give any reasons why he imposed a sentence of 5 years imprisonment against the appellant. A trial court has discretion in matters of sentence and the appellate court can only interfere with such sentence if it is wrong in principle or law and comes to us with a sense of shock.

The question before us is whether this appeal falls in the ambit of what we said in the foregoing paragraph.

The offence of manslaughter attracts a maximum sentence of life imprisonment. In deciding whether this sentence ought to be interfered with, we must consider the circumstances of this case. The admitted facts of this case were that the appellant and the deceased, who were wife and husband, respectively, had been at home taking some alcoholic drink when a quarrel erupted between the two and degenerated into a fight. The fight was stopped by some farm workers. The two later retired into their house and at 2100 hours, the deceased was heard calling for help to which the farm workers again went to intervene. The deceased was found bleeding and was rushed to the hospital where he was pronounced dead on arrival. The cause of the death was given by a forensic Pathologist as "head injury due to Blant trauma".

It is clear from the above, that the statement of facts does not come out clearly how the appellant inflicted the fatal injury on the deceased but what is clear is that it must have been severe. This is evident from the fact that the deceased died on the way or immediately on arrival at the hospital because his death was confirmed on arrival.

Supposing the trial judge had given some reasons for imposing a sentence of 5 years imprisonment against the appellant would we have said it was either wrong both in principle or in law and coming to us with a sense of shock for us to reduce it as being excessive? We have said elsewhere in this judgment that manslaughter carries a maximum sentence of life imprisonment. Given the facts of this case, we are unable to say that had the learned trial judge properly directed himself by assigning some reasons for the sentence he imposed, we

would still be convinced that a sentence of five years was not excessive in the circumstances of this case. We find nothing wrong with it, both in principle and in law. It does not come to us with any sense of shock. We abhor unnecessary use of violence as a way of settling trivial domestic disputes especially after the parties have been consuming alcoholic beverages, as was the case here.

All in all we find no merit in the arguments advanced in this case. The appeal lacks merit and so we dismiss it accordingly.

E.L. Sakala
CHIEF JUSTICE

S.S. Silomba
SUPREME COURT JUDGE

C. S. Mushabati
SUPREME COURT JUDGE