

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT KABWE

APPEAL NO 90 OF 2007

(CRIMINAL JURISDICTION)

BETWEEN:

FRANCIS BANDA

VS

THE PEOPLE

CORAM: CHITENGI, SILOMBA AND MUSHABATI, JJS
On the 6th and 8th November, 2007

For the Appellant: Mr. W. K. Cheelo, Legal Aid Counsel
For the Respondent: Mr C. F. R. Mchenga, Director of Public Prosecutions

JUDGMENT

SILOMBA, J.S, delivered the judgment of the Court.

Case referred to:

1. Moses Mwiba Vs The People (1971) Z.R, 131

This is an Appeal against the Order of the High Court delivered on the 10th of January, 2007. By that Order, the Appellant was convicted on the reduced charge of manslaughter contrary to Section 199 of the Penal Code, Chapter 87 of the Laws. The particulars of the offence were that on the 18th July 2006 at Luanshya in the Luanshya District of the Copperbelt Province of Zambia, the appellant unlawfully caused the death of Annie Tembo.

The record of the proceedings relating to the 10th of January, 2007 shows that the appellant pleaded guilty to the reduced charge of

manslaughter for which he was sentence to a term of 20 years imprisonment with hard labour. The facts that the prosecution presented to the trial court were that on the 18th July, 2006, the appellant went to Mikomfwa market where he bought fish. On his way back from the market, the appellant met a deacon of his church who asked him why he did not attend church regularly. In reply, the appellant told the deacon that it was because he had matrimonial problems.

When he reached his home, the appellant narrated to his wife, now deceased, the encounter he had with the deacon. Upon hearing the reason that her husband gave for not going to church, his wife became annoyed and attacked the appellant with the knife she was using at the time. The appellant grabbed the knife from her which he used to stab the wife who died. The post-mortem that was conducted later showed that the deceased died from shock.

At the hearing of the appeal, Counsel for the appellant indicated to us that he had abandoned the appeal against conviction and was now appealing against sentence only. The only ground of appeal against sentence was that the learned trial Judge misdirected himself when he stated that the appellant deserved no leniency and imposed a jail term of 20 years imprisonment with hard labour.

In his oral submission, Counsel for the appellant stated that when the charge of manslaughter was read to him the appellant readily

pleaded guilty and thereby saved the Court's time. Counsel submitted that in the circumstances, the sentence of 20 years did not fully take into account the fact that the appellant had pleaded guilty. There was no submission from the learned Director of Public Prosecutions on sentence.

We have carefully considered the submission of Counsel for the appellant and the proceedings in the court below. Before the learned trial Judge pronounced the sentence on the appellant, he stated and we quote: **"Though he is a first offender who has readily admitted the charge, the convict deserves no leniency whatsoever"**.

We wish to observe that the statement by the learned trial Judge is unfortunate in that it is contrary to the established principle of law that has been put in place by this Court for the guidance of lower courts. In the Case of **Moses Mwiba Vs The People(1)**, cited to us by Counsel for the appellant, we stated as follows:

"Where a reasonable sentence is passed this court will not interfere but we do consider that due allowance should be given to accused persons who plead guilty and show contrition. Their actions save the time of the Courts and the investigating officers".

In the circumstances of this appeal and in the view we take, the 20 years imprisonment imposed on the appellant is rather too excessive considering that he pleaded guilty to the charge of manslaughter and did not, therefore, waste the Court's precious time. We accordingly allow the appeal on sentence, quash the sentence imposed and

substitute a sentence of 10 years imprisonment with hard labour to run from the 19th July 2006, the date of arrest.

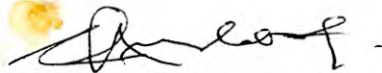


JUDGE OF THE SUPREME COURT



S S Silomba

JUDGE OF THE SUPREME COURT



C S Mushabati

JUDGE OF THE SUPREME COURT