

**IN THE SUPREME COURT OF ZAMBIA**  
**HOLDEN AT NDOLA**  
**(Criminal Jurisdiction)**

**SCZ APPEAL NO 98,99/2005**

**CHRISTOPHER MUKONDE**  
**FRIDAH CHILOMBO**

**1<sup>ST</sup> APPELLANT**  
**2<sup>ND</sup> APPELLANT**

**VS.**

**THE PEOPLE**

**RESPONDENT**

**Coram:** **Lewanika, DCJ, Mumba, Chitengi, JJS**  
5<sup>th</sup> December, 2006 and 6<sup>th</sup> March, 2007

**For the Appellant:** **Mr. C.F.R. Mchenga, Director of Public Prosecution**

**For the Respondent:** **Mr E.M. Sikazwe, Deputy Director of Legal Aid**

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## **JUDGMENT**

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**Mumba (JS) delivered the Judgment of the court.**

This is an appeal against sentence.

The 1<sup>st</sup> Appellant, **Christopher Mukonde** and the 2<sup>nd</sup> Appellant, **Fridah Chilombo** were originally charged with murder contrary to Section 200 of the Penal Code, Chapter 87 of the Laws of Zambia. The information was amended in the court below to manslaughter contrary to Section 199 of the Penal Code, Chapter 87 of the Laws of Zambia. Particulars were that the two Appellants on 20<sup>th</sup> January, 2005 at Kawambwa in the Kawambwa District of the Luapula Province of the Republic of Zambia jointly and whilst acting together unlawfully caused the

death of **Nyemba Kapwenge**. Appellants pleaded guilty to the charge and were sentenced to 25 years imprisonment with hard labour for the 1st Appellant and 25 years simple imprisonment for the 2nd Appellant. The sentences were effective 20<sup>th</sup> January, 2005, the date when they were apprehended. The Appellants have appealed against their sentences.

The facts in this case were that on 19<sup>th</sup> January, 2005, one **Dismass Mukonde**, the elder brother to the 1<sup>st</sup> Appellant passed away in Chibanga village in Kawambwa. Dismass Mukonde was also brother-in-law to the 2<sup>nd</sup> Appellant **Fridah Chilombo**. After this death, the 2<sup>nd</sup> Appellant suspected that the late Dismass Mukonde was killed by the deceased Nyemba Kapwenge by means of witchcraft. On 20<sup>th</sup> January, 2005. Both Appellants went to the house of the deceased who lived in the same village, they dragged him out and proceeded to take him to the funeral house. On the way, the 1st Appellant picked up a stick and started beating the deceased, the 2<sup>nd</sup> Appellant beat the deceased using bare hands. The deceased was taken to the bush where the two Appellants continued the beating, they left him in the bush. On the same day **David Chama**, nephew to the deceased and other villagers started looking for the deceased in the bush, they found him dead. David Chama observed that the deceased had multiple injuries on the head, he also saw sticks and burnt bricks on the scene. The matter was reported to the Police. The Police conveyed the body to Mbereshi Mission Hospital. Later, the relatives were advised to bury the deceased. The two Appellants



were formally arrested on 27<sup>th</sup> January, 2005 for the offence of murder. At the trial, the charge was reduced to manslaughter.

Submitting on behalf of the Appellants, Mr. **Sikazwe**, Acting Director of Legal Aid, stated that the learned trial Judge in the court below did not exercise leniency on the mitigation submitted in the court below which was to the effect that the Appellants were a married couple; 1<sup>st</sup> Appellant was aged 38 years while 2<sup>nd</sup> Appellant was aged 36 years; they had 8 children between them and two dependants; the two dependants and five of the children were going to school; both Appellants were also looking after their aged parents; both Appellants were first offenders who had pleaded guilty to manslaughter thereby demonstrating remorse. Counsel in the court below had also submitted that the Appellants were peasant farmers who were contributing to the agricultural industry; that deceased was suspected of having caused the death of the elder brother to the 1st Appellant by means of witchcraft. Mr. Sikazwe finally submitted that the sentences were on the higher side taking into consideration the circumstances of the case.

The Director of Public Prosecutions, Mr. **Mchenga** submitted that he would leave the matter to the discretion of the court.

We have observed that the Appellants were persons of youthful age at the time of the offence. We note with concern on

the facts on record, that the deceased was an innocent person who was killed merely on suspicion of witchcraft without more.

Sentences of 25 years for 1st offenders who had pleaded guilty are excessive. We believe that although this is a serious offence and that people ought not to take life so easily, the Appellants should be given an opportunity to rejoin society as reformed people.

We allow both appeals against sentence. The sentences of 25 years are set aside, instead, sentences of 10 years each on the same conditions are imposed.



**D. M. LEWANIKA**  
**DEPUTY CHIEF JUSTICE**



**F.N.M. MUMBA**  
**SUPREME COURT JUDGE**



**P. CHITENGI**  
**SUPREME COURT JUDGE**