

IN THE SUPREME COURT OF ZAMBIA APPEAL NO. 06 OF 2015
HOLDEN AT NDOLA
(Criminal Jurisdiction)

BETWEEN:

NAWA KALALUKA
AND
THE PEOPLE

APPELLANT

RESPONDENT

CORAM: **WANKI, MUYOVWE, MALILA, SC, JJS**
On 3rd March, 2015 and 3rd June, 2015

For the Appellant: Ms. E.I. Banda - Senior Legal Aid
Counsel, Legal Aid Board

For the Respondent: Ms. N.T. Mumba - Deputy Chief State
Advocate, National Prosecution
Authority

J U D G M E N T

WANKI, JS, delivered the Judgment of the Court.

CASES REFERRED:-

1. **Michael Coetzee -Vs- The People Appeal No. 135 of 1995 unreported.**
2. **Noah Kambobe -Vs- The People SCZ Judgment No. 14 of 2002.**
3. **Gideon Hammond Millard -Vs- The People (1998) ZR 52.**

The appellant was charged with the offence of murder contrary to **Section 200 of the Penal Code Chapter 87 of the Laws of Zambia**. The particulars were that the appellant on the 9th day of September, 2011 at Shang'ombo in Shang'ombo District of the Western Province in the Republic of Zambia, did murder one Mundia Lyabanji. The charge of murder was later reduced to

that of manslaughter contrary to **Section 199 of the Penal Code**. The particulars were that the appellant on the 9th day of September, 2011 at Shang'ombo in Shang'ombo District of the Western Province in the Republic of Zambia, did unlawfully cause the death of one Mundia Lyabanji. The appellant pleaded guilty to the charge of manslaughter. The Court below convicted the appellant upon his plea of guilty. The appellant who was a first offender was sentenced to 15 years imprisonment. The appellant now appeals against the said sentence.

The ground of appeal as advanced by the appellant is as stated below:-

“The sentence of 15 years imprisonment imposed on the appellant is excessive considering that he is a first offender.”

It was contended on behalf of the appellant that he is a first offender and as such entitled to some leniency. The sentence of 15 years imposed on the appellant when weighed against the maximum prescribed by the law for the subject offence is excessive and does not reflect the leniency due to a first offender who readily pleads guilty. It was further argued that there were no aggravating circumstances that could have necessitated such a harsh sentence and the appellant is remorseful for the death of his wife. Counsel for the appellant relied on the decisions in **MICHEAL COETZEE -VS- THE PEOPLE** ⁽¹⁾ **AND NOAH KAMBOBE -VS- THE PEOPLE.** ⁽²⁾

The State in its response supported the sentence of the Court below and submitted that the sentence meted on the appellant should not come to this Court with a sense of shock. In arriving at the sentence the Court below took into account the mitigation and the circumstances of the case.


We have considered the ground of appeal, the written Heads of Arguments and the submissions before us. We have also considered the sentencing remarks of the Court below.

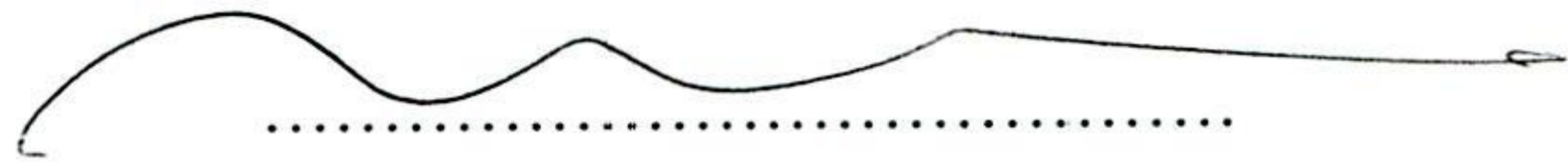
The appellant in this appeal has asked this Court to disturb the sentence meted on him by the Court below. We are alive to the fact that an Appellate Court should not lightly interfere with the discretion of the sentencing Court in respect of the sentence. We reaffirm what we said in **GIDEON HAMMOND MILLARD -VS- THE PEOPLE** ⁽³⁾ where we said that:-

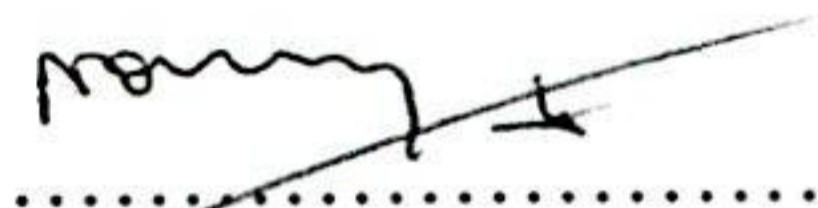
“An Appellate Court should not lightly interfere with the discretion of the trial Court on question of sentence but that for the Appellate Court to decide to interfere with the sentence, it must come to it with a sense of shock.”

We have anxiously examined the sentence complained of in this appeal and the mitigating factors which were presented to the Court below and highlighted in the appellant's arguments. The arguments which were spiritedly advanced by Counsel for the appellant did not persuade us. It is our view that the Court below accorded the appellant due, if not too much, lenience considering the fact that the appellant left his deceased wife in the swamps for dead after beating her, which fact we have found aggravating.

The sentence of 15 years does not induce any shock as this was an obvious case of manslaughter. The State in our view rightly supported the sentence. We find no merit in this appeal and we dismiss it accordingly.


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M. E. Wanki,
SUPREME COURT JUDGE.


.....
E.N.C. Muyovwe,
SUPREME COURT JUDGE.


.....
M. Malila, SC,
SUPREME COURT JUDGE.