SCZ Appeal No. 125/2017

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA

(Criminal Jurisdiction)

BETWEEN:

FRANCIS KAMFWA APPELLANT

AND

THE PEOPLE

RESPONDENT

Coram: Phiri, Muyovwe and Chinyama, JJS
On the 5th June, 2018 and 12th June, 2018

For the Appellants: Mr. K. Muzenga, Deputy Director, Legal Aid Board

For the Respondent: Mr. R. L. Masempela, Deputy Chief State Advocate, NPA

JUDGMENT

Phiri, JS, delivered the Judgment of the Court

Cases referred to:

1. Edom Lwela vs. The People, Appeal No. 124 of 2017
2. Kelvin Kabwe vs. The People, Appeal No. 123 of 2017.

This is an appeal against sentence only. The ground of appeal canvassed before us is that t'he sentence of 20 years imprisonment

imposed on the appellant was too excessive since the appellant was a first offender who readily pleaded guilty to the charge.

We wish to note that the reference to the sentence of 20 years imprisonment in the appellant's ground of the appeal was in error because the appellant was sentenced to 15 years imprisonment with hard labour. Both the Judge's notes and the warrant for execution of sentence issued by the learned trial Judge under Section 307 of the Criminal Procedure Code, Chapter 88 of the Laws of Zambia bear the sentence of 15 years imprisonment with hard labour.

The brief background to this appeal is that the appellant pleaded guilty to the offence of Manslaughter contrary to Section 199 of the Penal Code, Chapter 87 of the Laws of Zambia. Particulars of the offence were that the appellant, on the 27th day of December, 2014 at Mpika in the Mpika District of the Muchinga Province of the Republic of Zambia, did unlawfully cause the death of Pele Ndiki. He was convicted following his admission of the statement of facts read out to the trial Court by the prosecuting Counsel.

According to the facts presented to the trial Court, the appellant and the deceased were colleagues. They did some piecework together for which they were jointly paid through the deceased. After receiving their payment, they went to drink local beer during which an altercation developed between them when the deceased, who was much older than the appellant, refused to share the balance of the payment they received for their work. A fight ensued between the two during which the deceased was fatally injured. According to the Doctor's report on the postmortem examination conducted on the deceased's body, the cause of death was head and chest injury.

In mitigation, it was pleaded on behalf of the appellant that he was a first offender and that he was remorseful for what he did. He was sentenced to 15 years imprisonment with hard labour. In support of the ground of the appeal, Mr. Muzenga submitted that although the learned trial Judge indicated on the record that he had taken into consideration the mitigating factors pleaded on behalf of the appellant which included that he was a first offender; and acknowledged that the deceased was the aggressor; and that

the appellant deserved leniency, the sentence imposed on him did not actually reflect any leniency. In support of this proposition we were referred to our recent decisions in the cases of **Edoni Lwela vs. The People**[1], **and Kelvin Kabwe vs. The People**[2]. **In the Edom Lwela cas&**[11] the appellant pleaded guilty to one count of Manslaughter and was sentenced by the trial Court to life imprisonment. On appeal against sentence, we allowed the appeal, quashed the life sentence and in its place imposed a sentence of seven years imprisonment with hard labour, we held the sentence to be excessive. In the Kelvin Kabwe **case**[2], the appellant also pleaded guilty to Manslaughter and was sentenced by the trial Court to forty (40) years imprisonment with hard labour.

On appeal before us, we allowed the appeal after holding the sentence to be excessive for a first offender, quashed the forty (40) years sentence and in its place imposed a sentence of four (4) years imprisonment with hard labour. It was Mr. Muzenga's submission that the sentence of 15 years imprisonment with hard labour imposed on the appellant is manifestly excessive in the

circumstances of the present case, and that same should induce a sense of shock to us and entice us to interfere with it by reducing it.

In response to Mr. Muzenga's submission, Mr. Masempela argued that the sentence of 15 years imprisonment with hard labour imposed on the appellant was not excessive even though the appellant pleaded guilty and was a first offender. This was so because the trial Court ably justified the sentence by stating that violence should have no room in the civilized world except in very limited circumstances permitted by law; and even when the use of violence is permitted by law, it ought not be excessive. In Mr. Masempela's view, the injuries listed in the deceased's postmortem report showed that the appellant used excessive force which was an aggravating factor considering that the offence of Manslaughter carries a maximum of life imprisonment. It was therefore submitted that a sentence of 15 years imprisonment was not excessive as it formed a smaller portion of the maximum sentence of life imprisonment.

We have considered the ground of the appeal and the submissions made by both sides This appeal, like many others

before, raises the question of the need for consistency of sentences for similar offenders who get convicted of Manslaughter. Unfortunately, there is no clear cut answer or settled formula for the sentencing Judge to follow; and we do acknowledge that the absence of comprehensive statutory sentencing guidelines does not make any solution feasible in the near future.

Generally, the principles of sentencing are well settled; and so too is the need for the exercise of prudence, consistency and fairness by the sentencing Judge, among many other justifiable considerations. All these attributes are found in numerous decisions which this Court has made in the past and which it will continue to make now and in the future. It is with these thoughts in mind that we agree with the approach taken by Mr. Muzenga when he suggested to us that in deciding this appeal we ought to look at our recent decisions made in the recent past. With this approach, we are certain that a decent level of consistency can be achieved. It is in this light that we have equally found value in our pronouncements in the cases of Edom Lwela and Kelvin Kabwe, which are not reported as yet, to the present appeal. Applying the

sentencing policy which we adopted in those two cases to the present case, we feel duty bound to state that the sentence of 15 years imprisonment with hard labour comes to us with a sense of shock for being excessive. We so hold because in the present case, the appellant and the deceased were close companions, they worked together, they drunk together and the deceased was much older than the appellant. Over and above these facts, the appellant was a *first* offender and he never used any weapon or object during the fight in which the deceased was the aggressor by rejecting the appellant's right to the portion of the money which the two companions had jointly worked for. We do not think that all these relevant issues were accorded proper consideration by the learned trial Judge before imposing the sentence of 15 years. The learned trial Judge over relied on the use of violence by the appellant as if there was no fight between the two companions. We are satisfied that had the learned trial Judge adopted our recent approach in sentencing first offenders who plead guilty to Manslaughter, a much lesser sentence would have been arrived at.

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For the reasons we have given, we allow this appeal and quash the fifteen (15) years sentence and in its place we impose a sentence of seven (7) years imprisonment with hard labour with effect from the date of arrest.

GM1iri
SUPREME COURT JUDGE

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

J. Chin ma
SUPREME COURT JUDGE