

**IN THE COURT OF APPEAL OF ZAMBIA  
HOLDEN AT LUSAKA  
(Criminal Jurisdiction)**

**APP. No. 26/2022**

**BETWEEN:**

**GERSHOM SIAME**

**AND**

**THE PEOPLE**



**APPELLANT**

**RESPONDENT**

**CORAM : Mchenga DJP, Chishimba and Muzenga JJAs  
On 20<sup>th</sup> September, 2022 and 16<sup>th</sup> November, 2021**

For the Appellant : Mr. I. Lyambwa, Senior Legal Aid Counsel  
Messrs Legal Aid Board.

For the Respondent : Ms. R. Mudenda, State Advocate – National  
Prosecution Authority.

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**J U D G M E N T**

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**Chishimba JA, delivered the Judgement of the Court.**

**CASE AUTHORITIES CITED:**

1. Edom Lwela v The People SCZ Appeal No. 125 of 2017
2. Kelvin Kabwe v The People SCZ Appeal No. 123 of 2017
3. Francis Kamfwa v The People SCZ Appeal No. .../2017
4. Kaambo v The People (1976) ZR 122
5. Jutronich, Schutte & Lukin v The People (1965) ZR 9
6. Kimba Nyambe v The People CAZ Appeal No. 9 of 2022

**LEGISLATION CITED:**

1. The Penal Code Chapter 87 of the Laws of Zambia

2. The Court of Appeal Act, 2016.

1.0 **INTRODUCTION**

1.1 The appellant stood charged with two counts of the offence of manslaughter contrary to section 199 of the Penal Code Chapter 87 of the Laws of Zambia. In the first count, the particulars alleged that Gershom Siame, on 27<sup>th</sup> February, 2020, at Isoka in the Isoka District of the Muchinga Province of the Republic of Zambia, jointly and whilst acting together with others unknown, did cause the death of Shombe Henry.

1.2 In count two, it was alleged that Gershom Siame, on 27<sup>th</sup> February, 2020, at Isoka in the Isoka District of the Muchinga Province of the Republic of Zambia, jointly and whilst acting together with others unknown, did cause the death of Ojohn Siame.

1.3 The appellant pleaded guilty to both counts and was sentenced to 15 years imprisonment with hard labour in both counts. This is an appeal against sentence only.

2.0 **PROCEEDINGS IN THE COURT BELOW**

2.1 The record shows that the appellant, who was represented, when called upon to take plea, admitted both counts. The statement of facts revealed that on 27<sup>th</sup> February, 2020 at

around 05:00 hours, Shombe Henry left the home of Ojohn Siame for a business errand. On his way, he met some people who accused him of being behind the gassing activities in the area. Shombe was beaten and dragged to the home of the headman.

2.2 News of the beating of Shombe reached his host Siame who went to the headman's house to explain that the Shombe was his visitor. However, he was also apprehended and beaten for harbouring an alleged gasser. Among the people beating the two was the appellant. Shombe and Siame were beaten with hands, sticks and stones rendering them unconscious. Police heard of the assault on the two and rushed to the scene and picked the two.

2.3 They were rushed to the hospital where they were confirmed dead on arrival. Postmortems conducted on their bodies revealed that Shombe sustained a fractured skull leading to severe head injury while Siame sustained an open skull fracture with brain damage.

2.4 In mitigation, counsel stated that the appellant is a first offender, was remorseful and if given a second chance, would

never participate in mob justice. That being young, the possibility of him reforming was high.

2.5 The learned trial judge reasoned that the actions of the appellant, like any other illegal acts, deserve punishment so that the appellant can have a chance to reflect, hopefully reform, be deterred from committing similar offences and deter would be offenders from committing such offences. He noted that the appellant took the law into his hands by beating to death the deceased persons on suspicion of their being involved in gassing activities.

2.6 He went on to state that it must be made clear to every citizen that any suspicion of illegality should be reported to the police who are mandated to enforce the law. That no one should take the law into their own hands. That no matter what, the rule of law applies to all citizens to follow. Taking into account the mitigation and circumstances, the court sentenced the appellant to 15 years imprisonment with hard labour in both counts.

### 3.0 **GROUND OF APPEAL**

3.1 One ground of appeal has been advanced couched as follows:

***The trial court erred in law and fact when it sentenced the appellant to 15 years imprisonment, when he is a first offender.***

#### 4.0 **ARGUMENTS BY THE APPELLANT**

4.1 In support of the lone ground of appeal, counsel submitted that a sentence of 15 years imposed on the appellant who is a first offender and readily admitted the charge is excessive and should come before the court with a sense of shock. We were referred to the cases of **Edom Lwela v The People** <sup>(1)</sup> and **Kelvin Kabwe v The People** <sup>(2)</sup>, where sentences of life imprisonment and 40 years imprisonment with hard labour for manslaughter for first offenders who pleaded guilty, were reduced to 4 years on appeal.

4.2 Counsel contended that where an accused readily pleads guilty to the charge, the court should not just state that they are entitled to leniency, but that the sentence must reflect leniency as per the case of **Francis Kamfwa v The People** <sup>(3)</sup>. We were urged to interfere with the sentence of 15 years as being excessive and allow the ground of appeal.

#### 5.0 **ARGUMENTS BY THE RESPONDENT**

5.1 The State opposed the appeal and submitted that the trial court was on firm ground and within the jurisdiction of the law to

sentence the appellant to 15 years imprisonment with hard labour in both counts. Counsel argued that in terms of **section 16(5) of the Court of Appeal Act, 2016** and the case of **Kaambo v The People** <sup>(4)</sup>, the trial judge has the discretion to impose such other sentence and that an appellate court can only interfere with the sentence if it is wrong principle or if it comes with a sense of shock.

5.2 It was argued that in arriving at the sentences, the trial court took into account the presence of aggravating factors in that the appellant took the law in his hands by causing the deaths of the deceased persons through beatings using hands, sticks and stones. That the court should note that the deceased suffered serious injuries being an open skull fracture with brain damage with respect to Ojohn Siame, and skull fracture leading to severe head injury in the case of Shombe Henry.

5.3 The trial court considered all these factors and the maximum sentence available, and also considered the appropriate sentence to impose in the circumstances. Counsel argued that this court has the power to uphold the sentence depending on the circumstances and placed reliance on the case of **Jutronich, Schutte & Lukin v The People** <sup>(5)</sup> on the questions

an appellate court should consider when dealing with appeals against sentence.

5.4 Counsel submitted that the sentences of 15 years are neither wrong in principle as they are within the provisions of the law, nor are they manifestly excessive as to induce a sense of shock. That there are no exceptional circumstances in the case that would render it an injustice if the sentence was not reduced.

5.5 The offence of manslaughter being a serious offence punishable up to life imprisonment, the court below was on firm ground in imposing the sentences appealed against. We were urged to uphold the sentences imposed by the lower court.

## 6.0 **DECISION OF THE COURT**

6.1 We have considered the appeal before us and the arguments filed by the appellant and respondent. In the case of **Jutronich, Schutte & Lukin v The People** <sup>(5)</sup> the court set out the approach an appellate court must take when dealing with an appeal against sentence, and guided that the court must ask itself the following questions:

*(a) Is the sentence wrong in principle?*

*(b) Is the sentence so manifestly excessive as to induce a state of shock?*

*(c) Are there exceptional circumstances which would render it an injustice if the sentence was not reduced?*

6.2 **Section 202 of the Penal Code** provides the penalty for manslaughter and states that any person who commits the felony of manslaughter is liable to imprisonment for life. Therefore, as a starting point, the lower court was at large to impose any sentence up to life imprisonment.

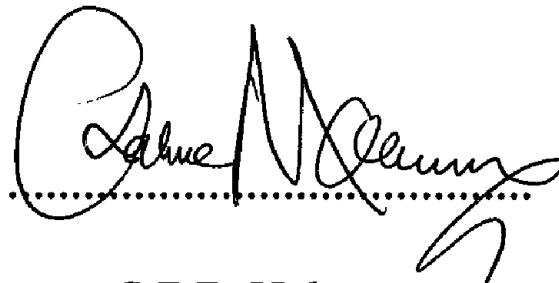
6.3 The circumstances of the case reveal that the deceased were assaulted and beaten on mere suspicion that they were involved in the gassing of citizens. In the case of **Kimba Nyambe v The People** <sup>(6)</sup>, which was also a case of mob justice on suspicion of gassing, we stated as follows:

*“There is no doubt that at the time of this offence, the country was beleaguered by several gassing incidents which disconcerted the citizens. Strangers, whether innocent or not fell victim to mob attacks on suspicion of being gassers. Just like we did in Hassan Kainda case supra, we take judicial notice of the conditions that beleaguered our great country. We note that many people gathered and assaulted the deceased. They cannot be said to have been people who set out with a common design to occasion the deceased grievous harm. The evidence is clear that the mob constituted different people who came from different locations. Had the trial court taken a proper view of the evidence, she would no doubt have arrived at a conclusion as ours.”*

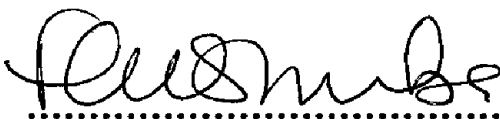


6.4 In arriving at a sentence, we took into consideration the circumstances of the case and the trauma that beleaguered the nation at the time and sentenced the appellant to 5 years imprisonment with effect from the date of arrest.

6.5 We take the same view in the present case. We set aside the sentences of 15 years imprisonment imposed by the trial court. We substitute it with the sentences of 5 years imprisonment with hard labour with effect from the date of arrest in both counts to run concurrently.

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**C.F.R. Mchenga**  
**DEPUTY JUDGE PRESIDENT**

A handwritten signature in black ink, appearing to read 'F.M. Chishimba', written over a horizontal dotted line.

**F.M. Chishimba**  
**COURT OF APPEAL JUDGE**

A handwritten signature in black ink, appearing to read 'K. Muzenga', written over a horizontal dotted line.

**K. Muzenga**  
**COURT OF APPEAL JUDGE**