**IN THE HIGH COURT FOR ZAMBIA** **HP/87/2023**
**AT THE CRIMINAL REGISTRY**
**HOLDEN AT LUSAKA**
*(criminal Jurisdiction)*

**THE PEOPLE**

**V**

**JAMES BWALYA MULENGA**

**MATTHEWS SIKAONGA**


**BEFORE THE HON. MR. JUSTICE C. KAFUNDA IN OPEN COURT THIS 29TH DAY OF JUNE, 2023.**

For the State: : Mrs C.M. Hambayi
Mr. Bob Mwewa
Mrs M.M. Chizongo
Mrs. C.A. Bauleni
**National Prosecution Authority**

For the Convicts: Mr. O. Ngoma – **Steven Osborne Advocates**

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**JUDGMENT ON SENTENCE**

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**CASES REFERRED TO:**

1. Moses Mwiba v The People (1971) Z.R. 131 (C.A.);
2. State v MD CC013/2018;
3. S v Matyotyi 2011(1) SACR 40(SCA)13;
4. Moses Chanda v The People Appeal No. 34 of 2007;
5. Emmanuel Phiri v The People (1982) Z.R. 77 (S.C.);

6. Philip Mungala Mwanamubi v The People SCZ Judgment No. 9 of 2013;
7. Levison Siame v The People Appela No. 60 of 2016;
8. Jutronich and Others v The People (1965) Z.R. 11.;
9. Abedinegal Kapesh and Another v The People (Selected Judgment No. 35 of 2017);
10. Njovu v The People.

**LEGISLATION REFERRED:**

1. The Penal code chapter 87 of the Laws of Zambia;
2. The Criminal Procedure Code Chapter 88 of the Laws of Zambia;
3. The Criminal Procedure Act No. 51 of 1997 (South Africa).

**MATERIALS REFERRED TO;**

1. The Journal of the American Academy of Psychiatry and the Law, volume 47, No. 3 of 2019

## 1.0. INTRODUCTION

**1.1.** The convicts herein, James Mulenga Bwalya and Mathews Sikaonga, stood charged with fifty four counts as follows:

One count of the offence of attempted abduction, contrary to **Sections 390 and 256 of the Penal Code**;

One count of the offence of abduction of a child, contrary to **Section 259 of the Penal Code**;

Five counts of the offence of causing grievous harm, contrary to **Section 229 of the Penal Code**;

Eight counts of the offence of assault occasioning actual bodily harm, contrary to **Section 248 of the Penal Code**;

Thirteen counts of the offence of abduction contrary to **Section 256 of the Penal Code**;

Thirteen counts of the offence of aggravated assault with intent to steal, contrary to **Section 295 of the Penal Code**; and

Thirteen counts of the offence of rape, contrary to **Sections 132 and 133 of the Penal Code**.

**1.2.** The convicts pleaded guilty to all the 54 counts aforestated.

## 2.0. BRIEF FACTS

**2.1.** According to the statement of facts which are on record of the Court, the victims in *casu* were abducted by the convicts and confined for varying periods, the longest being for a period of 200 days. The facts aver that during the period of confinement, the victims were subjected to *inter alia* physical and mental abuse, violent and degrading sexual exploitation, poor nutrition, lack of access to ablutions, forced alcohol abuse, forced ingestion of family planning pills and sleep deprivation. Ultimately, the convicts' actions towards the victims during the period of confinement culminated in the convicts being charged with the 54 counts alluded to above.

## 3.0. SENTENCING HEARING AND MITIGATION

**3.1.** Pursuant to **Section 302** of the **Criminal Procedure Code Chapter 88** of the **Laws of Zambia**, the Court directed the holding of a sentencing hearing. Orders for directions for the sentencing hearing were accordingly issued and

among those that were invited to lead evidence of the impact of the subject offences on the victims were the victims themselves. The Court was however informed that all the victims had declined to appear and lead evidence of the impact of the offences. The Court proceeded to receive evidence, specifically a report, from Mrs. Mukangi Nyirenda, a psycho-social counsellor from the Ministry of Community Development and Social Welfare. She has been coordinating the counselling and medical treatment of the victims, counselling of their close family members and generally the support of the victims following their traumatic experience. The conclusion of the report is that what the victims were subjected to when held in captivity by the convicts resulted in trauma which has far reaching psychological effects on the mental health of the young women victims who are still developing mentally. The victims feel socially excluded and have been experiencing challenges in maintaining their intimate relationships as most of their partners have left them due to what

happened to them. The victims suffer anxiety, feel dirty, damaged and soiled. In some cases, the impact of the offences has resulted in bad health. In the long term, the impact of the offences may lead to depression which has the potential to manifest in suicidal thoughts and actions.

**3.2.** The Court also received a report from Ms. Mirriam Mwiinga, the Executive Director of the Young Women Christian Association, an organization that has been corroborating with the Ministry of Community Development and Social Welfare in providing counselling and medical treatment to the victims. Ms. Mwiinga essentially came to the same conclusions as Mrs. Nyirenda and hence I won't go into the details of her report save to mention that she also told the Court that as a result of the offences, the victims were likely to be affected in their education and career prospects. Ms. Mwiinga was crossed examined by defence counsel regarding her evidence of the possible impact of the offences on the education and career

prospects of the victims. The witness was asked if she knew that some of the victims had actually been selected in the preliminary process for the recruitment of defence personnel. The witness responded that she was aware of six or so of the victims who had been picked in the said preliminary recruitment process.

**3.3.** When given an opportunity to give the Court their outlook on the offences they stand convicted of, the convicts stated that they were remorseful for their actions, and that they wished to ask for forgiveness from the victims as well as from the families of the victims. Both convicts told the Court that that they committed the offences in issue because they thought they were just playing a game without realizing that they were committing serious offences. They blamed their behavior on bad company and influence. That given a chance, they wished to return to school and become better people.

**3.4.** Counsel for the Defence also mitigated on behalf of the convicts and stated that the convicts are both young persons, Convict 1 being 22 and Convict 2 being 21 years old. Further, Counsel stated that the convicts are first offenders and that they readily pleaded guilty, thereby deserving of leniency. Counsel then referred to the case of **Moses Mwiba v The People**[1] wherein the Supreme Court held that allowance should be given to an accused person who pleads guilty and readily admits the charge.

**3.5.** In further mitigation, Counsel submitted that the convicts were remorseful for their actions and prayed that the Court exercises maximum leniency in meting out sentence. Counsel submitted that the offences that the convicts were convicted of were not prevalent in Zambia and hence the Court should not impose sentence that would have the objective of punishing the convicts as a result of the offences being prevalent because, in the first place, the offences were not prevalent.

**3.5.** Counsel also prayed that the Court takes into account the history of the convicts' childhood abuse of drugs, as stated in the medical report before court prepared by Dr. Msoni from Chainama Hills Mental Hospital. That, on account of the said findings, the Court must impose a punishment aimed at rehabilitating the convicts.

## 4.0. CONSIDERATION OF EVIDENCE

**4.1.** **Section 302** of the **Criminal Procedure Code** provides that the "**the court may, before passing sentence, receive such evidence as it thinks fit, in order to inform itself as to the sentence proper to be passed**". **Section 274 (1)** of the **South African Criminal Procedure Act No. 51 of 1977** also provides for a sentencing hearing in the exact terms as provided in **Section 302** of **Zambian Criminal Procedure Code** *Supra*. The South African legal regime is therefore a good comparator to the Zambian system in order to get an appreciation of the purpose of

**Section 302** of the **Criminal Procedure Code** (sentencing hearing).

**4.2.** In the South African case of the **State v MD[2],** AML Pathudi, High Court Judge, pronounced on the purpose of sentencing hearing in the following terms;

**4.3.** *"the sentence proceedings are proceedings sui generis. Both the State and the accused may lead evidence to aggravate or mitigate the sentence. The evidence must be led as provided for in terms of Section 274(1) of the Criminal Procedure Act 51 of 1977. The Section provides, for ease of reference, that "(a) court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed."*

**4.4.** The Court went on to state that the evidence received during the sentencing hearing seeks to bring to the fore, among others, the following issues;

**(a)** The accused's substantial and compelling circumstances to justify a lesser sentence.

**(b)** The Seriousness of the offence

**(c)** The personal circumstances of both the complainant and the offender.

**(d)** The interests of the community.

In considering the evidence in *casu*, I propose to take the same approach as the South African courts which have entrenched the use of sentencing hearing in their criminal proceedings.

**(a)** ***Substantial and compelling circumstances for lesser sentence***

**4.5.** In reference to the above considerations, I will begin by addressing the question of whether or not, the evidence on record does reveal a case of substantial and compelling circumstances that justify a lesser sentence for the convicts. The main thrust of the convicts' case for a lesser sentence is that they were remorseful. That in committing the offences in issue, they thought it was just a game and

did not realise that they were committing serious offences. In addition, defence counsel, in mitigation, pointed the Court to the fact that the convicts were youthful first offenders who had readily pleaded guilty to the offences and therefore deserved leniency.

**4.6.** That the Court should consider the convicts' history of drug abuse and further that the offences committed are not prevalent.

**4.7.** In approaching the issue of remorsefulness, I had resort to the sentiments of Ponnan JA, who in the case of **S v Matyityi**[3], a South African case, endeavored to lay the test to be applied by the Courts in evaluating if a convict is really remorseful or is one who just regrets the commission of the offence after being caught. Ponnan JA opined as follows;

**4.8.** *"There is, moreover a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate*

*to genuine remorse. Remorse is a pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgment of the extent of one's error ... In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until that happens, the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia, what motivated the accused to commit the deed; what has since provoked his or her change of heart; whether he or she does have a true appreciation of the consequences of those actions."*

**4.9.** My take from the above opinion is that in order for a convict to convince the court that he or she is remorseful, the convict must be able to demonstrate a sincere

responsibility for what they did. The convict must, without reservations, open up on what motivated the commission of the offence because, it is only after adopting the foregoing outlook to the offence, that a convict can show the Court what has provoked their change of heart.

**4.10.** In the case of the convicts before Court, all they said is that they regret what they did and that the motivation to commit the offences was driven by what they term in Bemba language as "**ukwangala**" which means "**playing**" in English. There was little effort on the part of the convicts to convey to the Court an appreciation and responsibility for the consequences of their actions on the lives of the victims despite the evidence of such consequences or impact having been laid before Court. Medical reports showing the state of the victims in the immediate aftermath of being rescued from unlawful confinement were submitted into evidence and so were the reports following the counselling and treatment of the victims post

rescue. In the face of such evidence, the attribution of committing the offences to "**ukwangala**" or "**playing**" by the convicts shows a lack of empathy and contrition towards the plight of those they offended. It reveals a cavalier attitude towards very serious offences. In the premises, I find no evidence of remorsefulness as a factor to justify a lesser sentence.

**4.11** Regarding the argument that the youth of the convicts should justify a lesser sentence for them, I wish to point out from the outset that youthfulness by itself does not justify a lesser sentence. The youthfulness asserted must speak to culpability. In other words, there must be a link between the circumstance of the offender being youth and their conduct in committing the offence.

**4.12.** In the Journal of the American Academy of Psychiatry and the Law, the authors tackled the issue of youthfulness in relation to sentence by stating that;

*"punishment appears less applicable for youths with less culpability because of developmental tendencies that predispose them to impulsive behavior or a diminished capacity to appreciate the wrongfulness of their actions. Youthfulness alone, however, may not be a substantial and compelling factor in justifying a reduced sentence. The key consideration is the specific culpability case, which maybe a direct function of the offender's youth ... in other words, defendants must demonstrate that their youthfulness caused significant impairment in their capacity to appreciate the wrongfulness of their conduct or to conform their conduct to the requirements of the law resulting in a crime."*

**4.13.** I am persuaded by the above reasoning, that it is not enough for a convict to simply stand before the Court, claim youthfulness and expect a lesser sentence. It must be demonstrated to the Court that because of the youthfulness of the convict and it's associated attributes,

the convict was significantly impaired in their capacity to appreciate the wrongfulness of their actions resulting into a crime. In the case of the convicts before Court, they, in execution of the offences at hand, run a sophisticated enterprise that lured 13 women into unlawful bondage and eluded the police for a period of over 200 days while inflicting serious physical and mental assault on the victims.

**4.14.** Given the foregoing, the question of the convicts' capacity to appreciate the wrongfulness of their actions on account of youth does not therefore arise. The crimes committed by the convicts do not bear characteristics of impulsiveness or any such characteristics common with or associated with youth behavior but are crimes that were well calculated and executed. This being the case, the youthfulness of the convicts cannot be considered as a diminishing factor to the culpability of the convicts in order to justify a lesser sentence.

**4.15.** In mitigation, counsel submitted that the cffences with which the convicts were charged and convicted of were not prevalent. I may agree with counsel's submission, to the extent that, relative to the other offences the convicts were charged with, the offence of abduction in Zambia may not be that prevalent. The foregoing notwithstanding, it must be borne in mind that the offence of abduction as at play in this matter, was not committed as a single and isolated act but was rather part of a series of offences whose purpose was to achieve the violent sexual exploitation of the 13 women victims. The ultimate purpose of confining the 13 victims was to achieve sexual gratification of the convicts by way of raping the victims. The convicts being male and having perpetuated violent sexual assault of female victims after unlawfully confining them, brings the whole series of offences committed by the convicts into the realm of Gender Based Violence (GBV). I do not need to belabor the point that GBV cases are worryingly prevalent

in Zambia. I, on account of the foregoing, reject the submission of prevalence offered by counsel.

**4.16.** The Court was invited to take into account the two mental examination reports rendered by Dr. Msoni in respect of James Bwalya and Mathews Sikaonga, the convicts herein. The reports, referred to by counsel in mitigation, were prepared following the mental examination of the convicts to determine the fitness of the convicts to take plea. The reports, of course, discuss the history of the two convicts and state that the two had a history of drug abuse. There is, however, no causal link made between that history and the commission of the offences at hand. This is because the reports dealt with the question of fitness to take plea and not the convicts' state of mind at commission of the offences. In that regard, the reports sought to be relied upon in mitigation are irrelevant. In any case, even as to the question of fitness to take plea, the Court rejected the recommendations of the report in

relation to James Bwalya that, because he had an anti-social attitude, he was not fit to plead and stand trial.

**4.17.** It is however indisputable that the convicts readily pleaded guilty and did not waste the Court's time. As rightly submitted by counsel, the plea of guilty ordinarily entitles the convicts to leniency. It should be noted, however, that in addition to considering the mitigating factors, the Court is required to consider the circumstances of the case which constitute aggravating factors. The aforesaid position was articulated by the Supreme Court in the case of **Moses Chanda v The People**[4]. I will return to consider this aspect later.

**(b) *Seriousness of the offence***

**5.1.** The commission of the offences at hand involved unlawful deprivation of liberty by way of abduction for purposes of sexual exploitation by use of violence. In the case of one the victims, she endured over 200 days of the infliction of the said offences on her person while pregnant. Rape was

continuously inflicted on all 13 confined victims by the convicts. The continuous and mass rape of the victims by the convicts obviously exposed the victims to the possibility of contracting sexually transmitted diseases including the dreaded HIV infection. It put the physical and mental health of the victims at very serious risk. In highlighting the gravity of the offence of rape, the Supreme Court in the case of **Emmanuel Phiri v The People**[5], expressed the following;

*"we must point out that rape is a very serious crime which calls for appropriate custodial sentences to mark the gravity of the offence, to emphasize public disapproval, to serve as a warning to others, to punish the offenders and, above all to protect women."*

The above sentiments were reechoed by the Supreme Court in the case of **Philip Mungala Mwanamubi v The People**[6].

**5.2.** I reiterate, that the whole scheme of offences perpetrated by the convicts resulted into a very serious infliction of crimes of GBV onto the victims. The seriousness of the offences at hand is therefore one that cannot be debated. In determining the proper sentence, due regard must be had to the seriousness of the offences at hand.

**(c) *Personal circumstances of victims and offenders***

**6.1.** The reports of the two experts, received during sentencing hearing and reviewed above, properly set out the personal circumstances of the victims. The same will not be repeated here. During the hearing of the report prepared by Ms. Mwiinga, however, defence counsel cross-examined her on her conclusion that, as a result of the impact of the offences, the education and career prospects of the victims may be negatively affected. It was brought to the attention of Ms. Mwiinga that six (6) or so of the victims have since been selected in the preliminary recruitment process of the defence forces. This was confirmed by Ms. Mwiinga.

**6.2.** The suggestion by the cross-examination is that the conclusion that the impact of the offences may negatively affect the victims' education and career prospects may not necessarily be true. My view on this issue is that the findings of both reports reveal very serious mental trauma that has been inflicted on the victims as a result of the offences at hand. These findings are uncontroverted. The fact that the victims will live with the mental effects of what transpired to them for many years, if not the rest of their lives, is not a matter of fiction or imagination but a reality for the victims, given the violence inflicted on them for purposes of raping them. As pointed out in the case of **Levison Siame v The People**[7], it is common cause that victims of crimes, especially sexual offences, are usually traumatized by their experiences.

**6.3.** In my view, any form of affirmative action or some sort of targeted assistance of the traumatized victims does not take away the haunting experience the victims went

through and the resultant mental trauma they endure and will continue to endure. To say that the mental trauma they suffered may affect their career prospects is therefore not an overstatement.

**6.4.** I have already discussed the personal circumstances of the convicts under (a) above and will not repeat the same.

***(d) Interest of the community (public interest)***

**7.1.** It is settled law that the first and foremost principle that should guide the Court in determining the sentence to impose is public interest. This is because, as stated in the case of **Jutronich and Others v The People**[8], criminal law is publicly enforced, not only with the object of punishing crime but also in the hope of preventing it. A fundamental aspect of public interest is the protection of the public from harm and one of the ways in which the public is protected by the courts is through the imposition of appropriate sentences that remove dangerous individuals from society and deter potential offenders. The Courts must hand out

adequate and proportionate sentences commensurate with the nature and gravity of the crime and the manner in which it was committed.

**7.2.** It was held in the case of **Abedinegal Kapesh and Another v The People**[9] that in balancing the mitigating and aggravating factors, the Court must consider the objective seriousness of the offence, that is to say, the surrounding facts and the maximum penalty for the offence in question, vis-à-vis the personal circumstances of the offender.

**7.3.** It was further held that the Courts must always keep in mind the gravity of the crime, the manner of commission of the crime, the motive for the crime, the nature and prevalence of the offence, as well as other attendant circumstances. The seriousness of the offences in issue have been discussed above, including their impact on both the physical and mental well being of the victims. The manner in which the offences were inflicted onto the victims was extremely violent. Violence at which one

shudders to imagine that it can be inflicted on a person. The offences committed by the convicts therefore reveal very aggravating circumstances. Public interest requires that commensurate sentence must be handed to the person who commits an offence with aggravating circumstances. Commensurate sentence in such a case entails the imposition of stiff punishment.

## 8.0. CONCLUSION

**8.1.** I have considered the personal circumstances of the convicts and found that their case did not present justification for lenient sentence except for their plea of guilty. I have also found above that the offences committed by the convicts are serious and occasioned serious physical and mental trauma on the victims. The manner in which the offences were committed and the physical and mental impact on the victims reveal aggravating circumstances in the case against the convicts.

**8.2**. When the case of aggravating circumstances is weighed against the convicts' favourable case of having pleaded guilty, the public interest which requires that stiffer penalties be handed in such aggravated cases outweighs the favorable attributes revealed by the convicts' case. Stiff punishment must mete out with the objective of protecting the public by removing the convicts from public circulation and to send a strong warning of deterrence to those who may habour ideas of committing such offences. The aforementioned being the case, where the law prescribes a mandatory minimum sentence, sentence over and above the mandatory minimum sentence will be handed to the convicts. Where there is no minimum sentence prescribed by the law, sentence of not less than half of the maximum sentence prescribed will be handed to the convicts. The following are therefore the sentences to be handed to the convicts;

***Count 1- attempted abduction, contrary to sections 390 and 256 of the Penal Code – 5 Years IHL***

***Count 6- abduction of a child, contrary to section 259 of the Penal Code – 5 Years IHL.***

***Count 7- aggravated assault with intent to steal, contrary to section 295 of the Penal Code - 15 Years IHL***

***Count 8- rape, contrary to sections 132 and `133 of the Penal Code – 50 Years IHL***

***Count 9- abduction, contrary to section 256 of the Penal Code - 5 Years IHL***

***Count 10- assault occasioning actual bodily harm, contrary to section 248 of the Penal Code – 3 Years IHL***

***Count 11- aggravated assault with intent to steal, contrary to section 295 of the Penal Code – 15 Years IHL***

***Count 12- rape, contrary to sections 132 and `133 of the Penal Code - 50 Years IHL***

***Count 13- abduction, contrary to section 256 of the Penal Code – 5 Years IHL***

***Count 14- assault occasioning actual bodily harm, contrary to section 248 of the Penal Code – 3 years IHL***

***Count 15- aggravated assault with intent to steal, contrary to section 295 of the Penal Code – 15 Years IHL***

***Count 16- rape, contrary to sections 132 and `133 of the Penal Code – 50 Years IHL***

***Count 17- abduction, contrary to section 256 of the Penal Code – 5 Years IHL***

***Count 18- causing grievous harm, contrary to section 229 of the Penal Code- 5 Years IHL***

***Count 19 aggravated assault with intent to steal, contrary to section 295 of the Penal Code – 15 Years IHL***

***Count 20- rape, contrary to sections 132 and `133 of the Penal Code – 50 Years IHL***

***Count 21- abduction, contrary to section 256 of the Penal Code – 5 Years IHL***

***Count 27- aggravated assault with intent to steal, contrary to section 295 of the Penal Code - 15 Years IHL***

***Count 28 rape, contrary to sections 132 and `133 of the Penal Code – 50 Years IHL***

***Count 29- abduction, contrary to section 256 of the Penal Code – 5 Years IHL***

***Count 30- assault occasioning actual bodily harm, contrary to section 248 of the Penal Code – 3 Years IHL***

***Count 31- aggravated assault with intent to steal, contrary to section 295 of the Penal Code – 15 Years IHL***

***Count 32- rape, contrary to sections 132 and `133 of the Penal Code – 50 Years IHL***

***Count 33- abduction, contrary to section 256 of the Penal Code – 5 Years IHL***

***Count 34- assault occasioning actual bodily harm, contrary to section 248 of the Penal Code – 3 Years IHL***

***Count 35- aggravated assault with intent to steal, contrary to section 295 of the Penal Code – 15 Years IHL***

***Count 36- rape, contrary to sections 132 and `133 of the Penal Code – 50 Years IHL***

***Count 37- abduction, contrary to section 256 of the Penal Code- 5 Years IHL***

***Count 38 causing grievous harm, contrary to section 229 of the Penal Code – 5 Years IHL***

***Count 39- aggravated assault with intent to steal, contrary to section 295 of the Penal Code – 15 Years IHL***

***Count 40- rape, contrary to sections 132 and `133 of the Penal Code – 50 Years IHL***

***Count 41- abduction, contrary to section 256 of the Penal Code- 5 Years IHL***

***Count 42- assault occasioning actual bodily harm, contrary to section 248 of the Penal Code – 3 Years IHL***

***Count 43- aggravated assault with intent to steal, contrary to section 295 of the Penal Code – 15 Years IHL***

***Count 44- rape, contrary to sections 132 and `133 of the Penal Code – 50 Years IHL***

***Count 45- abduction, contrary to section 256 of the Penal Code – 5 Years IHL***

***Count 46- causing grievous harm, contrary to section 229 of the Penal Code – 5 years IHL***

***Count 47 aggravated assault with intent to steal, contrary to section 295 of the Penal Code – 15 Years IHL***

***Count 48- rape, contrary to sections 132 and `133 of the Penal Code – 50 Years IHL***

***Count 49- abduction, contrary to section 256 of the Penal Code – 5 Years IHL***

***Count 50- assault occasioning actual bodily harm, contrary to section 248 of the Penal Code – 3 Years IHL***

***Count 51- aggravated assault with intent to steal, contrary to section 295 of the Penal Code – 15 Years IHL***

***Count 52- rape, contrary to sections 132 and `133 of the Penal Code – 50 Years IHL***

***Count 53- abduction, contrary to section 256 of the Penal Code – 5 Years IHL***

***Count 54- assault occasioning actual bodily harm, contrary to section 248 of the Penal Code. – 3 Years IHL***

**9.0.** It will be noted from the sentences handed above that I have omitted to hand sentence in respect of offences affecting FM and RMC i.e counts 2 to 6 and counts 23 to 26 respectively. This is because of the fact that FM and RMC, relative to the other victims, were subjected to severe violence and cruelty whose extent is difficult to describe with words. The two victims appeared to have been deliberately singled out of the victims and were subjected to brutal violence as a form of punishment and subjugation.

**9.1.** To illustrate the brutality of these attacks, I will briefly outline the facts surrounding the circumstances of the two victims herein namely, FM and RMC.

**9.2.** FM was the first victim to be abducted by the convicts and at the time she was abducted, she was with her three-year-old child and she was also pregnant. The facts reveal that FM was physically assaulted after her abduction until she became unresponsive and that later on, she was raped by

the convicts in the presence of her three-year-old daughter. This happened several times until the convicts decided to release FM's daughter by dumping her near a police station. The convicts continued to have forced and violent sexual intercourse with FM during the period of her confinement and continued to do so when FM was advanced in her pregnancy. Further, FM was subjected to harsh living conditions, thereby putting her life and that of her unborn child at risk. At the time she was rescued, she could not walk unaided as her legs had swelled to double their size. She was literally at a point of death and yet the convicts continued to rape her.

**9.3.** The other victim, RMC, was the 6th victim to be abducted by the convicts. After her abduction, the convicts launched a vicious attack on RMC using an iron bar, causing her to sustain a broken leg as a result and also to pass out. This was because RMC vehemently resisted to be raped by the convicts and in order to break her will to resist the sexual assault on her, the convicts resorted to viciously attack

RMC. The convicts also resented RMC because she came from a comfortable background. Despite her broken leg and suffering excruciating pain, the convicts continued to have forced and violent sexual intercourse with RMC during the period of her unlawful confinement. A medical examination subsequently conducted on RMC indicated that she had suffered multiple concussions and had fresh bruises all over her body and that she had also sustained a fracture of the left tibia. She had to be immediately put in a plaster of paris upon her rescue.

**9.4.** The aforementioned is illustrative of the high levels of cruelty and callousness exhibited by the convicts towards FM and RMC. The convicts showed no empathy whatsoever for the suffering they inflicted on FM and RMC.

**9.5.** It is my view that the convicts' atrocious attacks on FM and RMC exacerbate the serious and aggravated circumstances of the offences herein and hence justify the imposition of the maximum possible sentences in relation to offences involving violence and sexual assault because

the former was employed in an atrocious manner to achieve the latter. The following will therefore be the sentences to be handed to the convicts in relation to the offences affecting FM and RMC;

**FM**

***Count 2- aggravated assault with intent to steal, contrary to section 295 of the Penal Code - 20 Years IHL***

***Count 3- rape, contrary to sections 132 and `133 of the Penal Code – Life Imprisonment***

***Count 4- abduction, contrary to section 256 of the Penal Code – 5 years IHL***

***Count 5- assault occasioning actual bodily harm, contrary to section 248 of the Penal Code – 5 years IHL***

**RMC**

***Count 23- aggravated assault with intent to steal, contrary to section 295 of the Penal Code – 20 Years IHL***

***Count 24- rape, contrary to sections 132 and `133 of the Penal Code – Life Imprisonment***

***Count 25- abduction, contrary to section 256 of the Penal Code – 5 Years IHL***

***Count 26- causing grievous harm, contrary to section 229 of the Penal Code – 7 years IHL***

## 10.0. APPLICATION OF SENTENCE

**10.1.** I did indicate above, that the offences herein predominantly formed a series of conduct whose purpose was to abduct women and confining them with the aim of raping them. The offences were committed from events that were related and therefore formed a continuity of purpose as was stated in the case of **Isaac Njovu v The People[10].** The Supreme Court in the **Njovu** case guided that sentences for counts that form a continuity of purpose should run concurrently. It follows, therefore, that except for count 1 for the offence of attempted abduction, Count 6 for the offence of abduction of a child, Count 3 and 24 in respect of which life sentences have been imposed, all the

sentences will run concurrently with effect from the date of arrest. Counts 1 and 6, not having been part of the series of offences forming the continuity of purpose, their sentences will run consecutively from date of arrest, while their cumulative sentence will run consecutively to the concurrent sentences.

**IRA**

**Dated the 29th day of June, 2023.**

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**C. KAFUNDA**
**HIGH COURT JUDGE**