

EDWARD SANKALIMBA v THE PEOPLE (1981) Z.R. 258 (S.C.)

SUPREME COURT  
SILUNGWE, C.J., BRUCE-LYLE AND CULLINAN, J.J.S.  
8TH APRIL AND 4TH DECEMBER, 1980  
(S.C.Z. JUDGMENT NO. 33 OF 1980)

**Flynote**

Criminal law and procedure - Murder - Insanity - Defence of.

Criminal law and procedure - Murder- Mistaken belief - Whether available where insanity is defence.

**Headnote**

The appellant was charged with and subsequently convicted of murder by a commissioner of the High Court. The appellant stabbed the deceased to death with a knife. His evidence was that he believed that he was stabbing an animal. Evidence was adduced to show that the appellant had suffered from a mental illness before and had behaved in unusual manner on several occasions. Two defences were advanced, namely mistaken belief and lack of intention.

**Held:**

- (i) For the defence of mistaken belief to stand, it must be shown that it was both reasonable and honest. Reasonableness cannot be attributed to a person whose mind is in a state of disorder.
- (ii) The appellant intended to do grievous harm to his victim but he was not criminally responsible for his actions because at the time, due to his mental illness he was incapable of understanding what he was doing which brings him within the ambit of s. 12 of the Penal Code.

**Legislation referred to:**

Penal Code, Cap. 146 ss. 9, 10, 12.

**Case cited:**

(1) Musole v The People (1964) Z. and N.R.L.R. 173.

For the appellant: G.T. Moruthane (Miss), Assistant Senior Legal Aid Counsel.

For the respondent: A.H. Odora - Obote, State Advocate.

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**Judgment**

**SILUNGWE, C.J.:** delivered the judgment of the court.

The appellant was charged with, and subsequently convicted of murdering Theresa Sankalimba - his wife - by stabbing her three times

in the chest thereby inflicting serious injuries from which she died a day later. A pathologist who conducted a post-mortem examination on her body attributed the cause of death to shock due to haemorrhage.

The appellant has all along admitted responsibility in bringing about his wife's death - the only issue being whether he appreciated immediately before, and during the process of inflicting the wounds, that the victim was a human being.

It is necessary to shortly state the facts of the case. At the time of the fatal incident, the appellant and the deceased had been married for fourteen years and together had five children. Apart from an episode in 1975 (to which we shall come presently) it would appear the marriage was generally a happy one. The appellant was seemingly a prosperous businessman. Two of the main prosecution witnesses, Wellington Mukuka and Joseph Mumba, nephew and brother-in-law respectively, resided with the appellant and assisted him in his business.

In the morning of March 10th, 1976, Wellington and Joseph were off-loading goods from the appellant's truck at about 0900 hours when the appellant asked the deceased to look for a cheque (in their bedroom) which he wished to pay into his bank account that morning. After a little while, and on thinking that the deceased might have forgotten where she had placed the cheque, he went into the bedroom "to try and help" her to trace the cheque in question. To quote the appellant's own words:

"When I entered I did not see clearly because the bedroom was dark. I tried to open the wardrobe door. It seemed as if I had provoked something which looked like a fox or dog. I started struggling with it. There is very little room in my bedroom . . . The bedroom is congested, I had little space to manoeuvre. I took out a pocket knife and stabbed the thing I thought was an animal. I stabbed it . . . more than once. I then heard my wife saying: 'Oh Sankalimba help me I am being attacked'."

At that point in time, according to the appellant's story, he realised that the victim was not the animal he had supposed it to be, but his wife. He then forthwith went and reported the matter to the police.

In his sworn and caution statement to the police and also in his unsworn statement before the High Court the appellant maintained he had supposed his wife to be an attacking fox or dog when he turned his knife on the "animal".

That the appellant suffers from hallucinations is common cause: Joseph, his brother-in-law (who had resided with him since 1972) and Wellington, his nephew, both testified to this effect. On their evidence, the appellant sometimes said unusual things to himself and behaved abnormally. For instance, whilst driving, he would bring his car to a halt and say: "See what is in front" when in fact there was nothing noteworthy there. On an occasion in 1975, he said: "Look at the dog which is on the windscreen". In reality there was no dog there at all. He would "say

unusual things to himself". He would say, "See people have gathered around here . . . (they) want to kill me". At times, he would remain "very quiet".

We now revert to the episode of 1975. During that year, the appellant beat the deceased and, following a report made to the police by the latter he was taken away by the police and later detained for a few days at a hospital mental annexe in Ndola.

Two defences have been advanced before us, namely, mistaken belief and lack of intention. The defence of mistaken belief is canvassed under section 10 of the Penal Code which reads:

"10. A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist. The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject."

As the basis of his defence is that the appellant had laboured under a state of hallucination, we do not think that the defence of mistaken belief stands any chance of success, for, in order to succeed, it is necessary to show that the mistaken belief was both reasonable and honest. To attribute reasonableness to a person whose mind is in a state of disorder would be an affront to common sense. As Conroy, C.J., observed in *Musole v The People* (1), at page 179:

"To avail the appellant his mistaken belief had to be both reasonable and honest. I cannot accept that a belief induced by intoxication is reasonable."

By analogy, therefore, we are of the view that the appellant's belief induced by hallucination could not have been reasonable. The defence of mistaken belief here cannot thus succeed.

We must now turn our attention to the second ground of appeal, that is, lack of intention. The defence relied on section 9 of the Penal Code which is couched in the following terms:

"9. (1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.  
(2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.  
(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility."

In this particular case, however, the appellant's intention was intact, in that he actually intended to cause grievous harm or death to his victim. It

seems to us, therefore, that the defence under section 9 is not available to the appellant.

The question, nonetheless, arises as to whether the prosecution proved in the court below that the appellant had the necessary *mens rea* for murder when he inflicted the fatal stab wounds upon his wife. The appellant's case has throughout been that he believed his wife to be an attacking fox or dog when the fatal incident occurred. He had previously seen an imaginary dog on the windscreen of his vehicle but never before had he been faced with an attacking dog. The factual evidence concerning the appellant's mental illness is abundantly present; even Joseph, the deceased's brother, who had nothing to gain by supporting the appellant's story, as well as Wellington, gave corroborative evidence in the matter. It is unfortunate that oral medical evidence was not forthcoming on this important issue, as the doctor in question had since gone abroad and efforts to secure his presence in court were unsuccessful. The learned trial commissioner rejected the appellant's claim that he believed his wife to be an attacking dog. We consider that the overwhelming and uncontradicted evidence of the appellant's mental illness was such that the learned trial Commissioner's finding in this respect cannot, on the facts, be sustained.

The appellant quite clearly intended in the least to do grievous harm to his victim. Owing to his mental illness, however, he believed his victim to be an animal. We are satisfied, therefore, that he was not criminally responsible for his actions because at the time, due to his mental illness, he was incapable of understanding what he was doing, which brings him within the ambit of section 12 of the Penal Code. In the circumstances, the appellant is not guilty by reason of insanity. The conviction for murder and the attendant sentence are set aside. We order that the appellant be detained during the President's pleasure.

Detention under President's pleasure

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