

## **NOAH KAMBOBE v THE PEOPLE.**

Supreme Court.  
Ngulube, CJ, Mambilima and Chitengi JJS.  
16<sup>TH</sup> April, 2002.  
(SCZ Judgment No. 13 of 2002.)

### **Flynote**

*Criminal Law - Sentence -Principles of sentencing - Sentence shocking in its severity - Impropriety of.*

### **Headnote**

The appellant pleaded guilty to a charge of manslaughter. The particulars were that on 26<sup>th</sup> March 1995, at Lusaka jointly and whilst acting together with somebody else he unlawfully caused the death of Maria Kakangu. The facts of the case were that the appellant and another had gone on a drinking spree and on their way back, without any provocation they came across Maria Kakangu who was 60 years old and assaulted her. In the process they twisted her neck and she died.

The learned trial Judge took an extremely dim view of the facts and especially the killing of an old lady by a young man. After a lengthy lecture running to several pages, the learned trial Judge decided to do something unusual and novel, namely to keep the appellant in custody until he had reached the age of the deceased. For that purpose he subtracted the appellant's age from that of the deceased and arrived at a sentence of 32 years imprisonment with hard labour (I.H.L.). The appellant appealed against the sentence.

#### **Held:**

A sentence of thirty two years imprisonment and formula adopted was not only wrong in principle, but also produced a truly shocking sentence.

*M. Kabesha of Kabesha and Company* for the appellant.  
*J.C. Kaumba (Mrs.) Deputy Chief Principal, State Advocate* for the State.

### **Judgment**

**NGULUBE, CJ**, delivered the judgment of the Court.

The appellants pleaded guilty to a charge of manslaughter. The particulars were that, on 26<sup>th</sup> March 1995, at Lusaka jointly and whilst acting together with somebody else he

unlawfully caused the death of Maria Kakangu.

The facts were that the appellant and another had gone on a drinking spree and on their way back, without any provocation they came across Maria Kakangu who was 60 years old and assaulted her. In the process, they twisted her neck and she died.

The learned trial judge took an extremely dim view of the facts and especially the killing of an old lady by a young man. After a lengthy lecture running to several pages, the learned trial judge decided to do something unusual and novel, namely to keep the appellant in custody until he had reached the age of the deceased. For that purpose he subtracted the appellant's age from that of the deceased and came up with a sentence of 32 years imprisonment with hard labour (I.H.L).

On behalf of the appellant, counsel has argued that the sentence was excessive and did not reflect the leniency which should be accorded to a first offender who pleads guilty. That was a valid complaint. Counsel has also complained that the period already spent in custody was not taken into account when this sentence was imposed. Again that is a valid point. Finally, counsel has complained about this novel principle of sentencing and he has pointed out the possible absurd results if a younger victim were involved. We agree with that submission as well. We do have to say that the sentence of 32 years induced a profound sense of shock. It was wrong in principle and certainly does not reflect any credit for the plea of guilty. In addition, the appellant was fairly youthful and the circumstances surrounding the offence showed that there was drinking and drunkenness.

The facts recited which were very brief, did not justify the very dim view taken and certainly they did not justify the new formula which we disapprove of for sentencing those who kill others. The formula has no support in principle, in practice, or in law. It was without precedent and we disallow it as a precedent. The result in this case was that it produced a truly shocking sentence. We allow the appeal against sentence and in its place we substitute what we consider to be more appropriate. The appellant will serve ten (10 ) years imprisonment with hard labour with effect from 4<sup>th</sup> June 1995.

Appeal allowed.