

**IN THE COURT OF APPEAL OF ZAMBIA**

**Appeal No.101/2024**

**HOLDEN AT LUSAKA**

**(Criminal Jurisdiction)**

**BETWEEN:**

**TIMOTHY LIPOFYA**



**APPELLANT**

**AND**

**THE PEOPLE**

**RESPONDENT**

**Coram: Mchenga DJP, Majula and Muzenga, JJA**

**On 13<sup>th</sup> January 2026 and 25<sup>th</sup> March, 2026**

**For the Appellant: Mr. K. Katazo, Senior Legal Aid Counsel,  
with M. Lubasi-Banda, Legal Aid Counsel,  
Legal Aid Board**

**For the Respondent: Ms. R. Nsokolo, State Advocate, National  
Prosecution Authority**

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

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**Mchenga DJP, delivered the judgment of the court**

**Legislation referred to:**

1. The Penal Code Chapter 87 of the Laws of Zambia
2. The Court of Appeal Act, Chapter 85 of the Laws of Zambia

**Cases referred to:**

1. Sipalo Chibozu and Chibozu v. The People [1981] Z.R. 28
2. Edom Lwela v. The people SCZ Appeal No. 124 of 2017

3. Kelvin Kabwe v. The People SCZ Appeal No. 123 of 2017
4. Francis Kamfwa v. The People, SCZ Appeal No125 of 2017
5. Jutronich and Others v. The People [1965] Z.R 9

## **1.0. INTRODUCTION**

- 1.1. The appellant appeared before the High Court (Chocho, J.), charged with the offence of Murder contrary to **Section 200 of the Penal Code**.
- 1.2. Before the commencement of the trial, the charge was amended and substituted with the lesser offence of manslaughter, contrary to **Section 199 of the Penal Code**.
- 1.3. The appellant admitted the reduced charge, and was convicted after he admitted the facts in support of the charge.
- 1.4. He was sentenced to 22 years imprisonment, with hard labour.
- 1.5. He has appealed against the sentence.

## **2.0. CASE BEFORE THE HIGH COURT**

- 2.1. According to the facts admitted by the appellant, on 25<sup>th</sup> December 2022, at about midday, Raphael Mumba was at his mother's house when the appellant turned up and joined him. The appellant was carrying some beer.
- 2.2. The appellant offered to drink the beer with Raphael Mumba, an offer that Raphael Mumba accepted.

- 2.3.** When the duo had consumed the beer, the appellant asked Raphael Mumba to buy some beer. Raphael Mumba told the appellant that he did not have money to buy beer.
- 2.4.** This annoyed the appellant, who beat up Raphael Mumba, until he lost consciousness. He was subsequently admitted into a hospital, where he died on 15<sup>th</sup> January 2024.
- 2.5.** A postmortem conducted on his body, found the cause of his death to be **‘increased intracranial pressure secondary to head injury with subdural hematoma’**.
- 2.6.** The trial Judge found that the circumstances in which the offence was committed was aggravated by the fact the attack on Raphael Mumba was unprovoked and it took place at his mother’s house. In addition, a young person lost his life due to the consumption of alcohol.

### **3.0. GROUNDS OF APPEAL AND ARGUMENTS BY THE PARTIES**

- 3.1.** The sole ground of appeal is that the trial Judge erred in law and fact when she imposed a sentence of 22 years with hard labour, on a person who had pleaded guilty to a charge of manslaughter.

- 3.2.** In support of the appeal, Mrs. Lubasi-Banda referred to the case of **Sipalo Chibozu and Chibozu v. The People**<sup>1</sup>, and submitted that the evidence before the trial Judge did not point at any unusually severe injuries, warranting the imposition of a lengthy sentence on the appellant. Our attention was also brought to the fact that no offensive weapon was used.
- 3.3.** She also referred to the cases of **Edom Lwela v. The People**<sup>2</sup>, **Francis Kamfwa v. The People**<sup>3</sup> and **Kelvin Kabwe v. The People**<sup>4</sup>, were offenders who were similarly circumstanced to the appellant, were sentenced to shorter periods.
- 3.4.** In response to the appeal, Ms. Nsokolo referred to the case of **Jutronich and Others v. The People**<sup>5</sup>, and submitted that we should not interfere with the sentence because it was not wrong in principle, so as to induce a sense of shock as being manifestly excessive.
- 3.5.** She submitted that the aggravating factors in this case, were the injuries that Raphael Mumba suffered and his loss of consciousness.

#### **4.0. CONSIDERATION OF APPEAL AND DECISION OF THE COURT**

- 4.1. Section 16(5) of the Court of Appeal Act**, sets out the

circumstances in which this court can interfere with a sentence. It reads as follows:

**The Court may, on an appeal, whether against conviction or sentence, increase or reduce the sentence, impose such other sentence or make such other order as the trial court could have**

**imposed or made, except that—**

- (a) in no case shall a sentence be increased by reason of or in consideration of evidence that was not given at the trial; and**
- (b) the court shall not interfere with a sentence just because if it were a trial court it would have imposed different sentence, unless the sentence is wrong in principle or comes to the Court with a sense of shock.**

**4.2.** For one to be charged with the offence of manslaughter, such a person would have inflicted injuries that caused death. It follows, in a charge of manslaughter there will always be injuries but whether those injuries can be classified as being aggravated, will depend on the circumstances of a particular case.

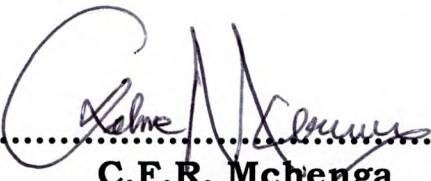
**4.3.** In this case, the injuries leading to death were inflicted by the appellant on a friend he had been drinking with. The appellant was aged 35 years old, while his friend was aged 27 years old.

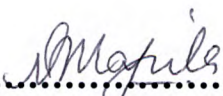
- 4.4. Although Raphael Mumba lost consciousness after being assaulted by the appellant, the postmortem report did not indicate the observation of any visible external injuries.
- 4.5. The pathologist only observed the **‘increased intracranial pressure secondary to head injury with subdural hematoma’**, after opening the skull.
- 4.6. It is our view that the categorisation of the appellant’s assault of Raphael Mumba’s as brutal was severe. We hold a similar view of the conclusion by the trial Judge of the fact that the assault of Raphael Mumba by the appellant was aggravated by the fact that he followed him to his mother’s house.
- 4.7. This fact did not aggravate the circumstances in which the offence was committed because they had been drinking from that place. The place of the assault would have probably been an issue, if the appellant followed Raphael Mumba to his mother’s house just for the purpose of assaulting him.
- 4.8. Consequently, we agree with Mrs. Lubasi-Banda’s submissions that there were no aggravating factors to warrant the imposition the severe sentence of 22 years. That sentence therefore comes to us with a sense of shock as being excessive and wrong in principle.

4.9. We find that this is an appropriate case in which we should invoke the powers vested in us by **Section 15 (5) (b) of the Court of Appeal Act**, and adjust the sentences downwards.

**5.0 VERDICT**

5.1 The sentence of 22 years is set aside. In its place we impose a sentence of 4 years imprisonment with hard labour. The sentence will run from 16<sup>th</sup> January 2023.

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

  
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**B.M. Majula**  
**COURT OF APPEAL JUDGE**

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