

IN THE SUPREME COURT FOR ZAMBIA

APPEAL NO. 9 OF 2002

HOLDEN AT NDOLA

(Criminal Jurisdiction)

B E T W E E N:

AGNESS KUNDA NKANDU NYUBI

APPELLANT

AND

THE PEOPLE

RESPONDENT

CORAM: Ngulube, CJ, Sakala and Chitengi, JJS.

On 5th March, 2002.

For appellant - Mr. A. Mulemena, Principal Legal Aid Counsel

For respondent - Mrs. J.C. Kaumba, Deputy Chief State Advocate

J U D G M E N T

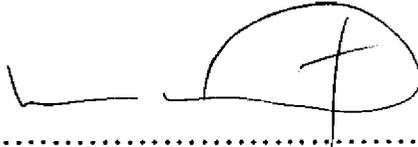
Ngulube, CJ, delivered the judgment of the Court.

The appellant pleaded guilty to a charge of manslaughter for which she was sentenced to 8 years simple imprisonment. She has appealed against that sentence. On her behalf, Mr. Mulemena has urged upon this court some new developments in her circumstances. We are informed that

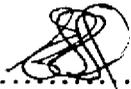
she has had heavy family responsibilities in looking after her own children one of whom is an imbecile and another is a TB sufferer. We have learnt that the TB patient has become worse such that he is unable to look after four grandchildren that used to be the appellant's responsibility. We are asked to take into account the latest development in the personal circumstances of the appellant and to consider suspending the sentence.

We do not forget the facts of the case. The appellant had axed her own brother on the head believing him to have been responsible through witchcraft for the deaths of her children and the illness of another child who was in hospital on the material day. As a matter of fact, she was going to the hospital with the deceased brother when all of a sudden she hit him on the head with an axe. We have said on many occasions that while we accept that a belief in witchcraft is strongly held in certain circles of our community, and while we accept that such a belief if genuine mitigates and the extenuates severity of cases charged, nonetheless we have also said it is our duty to discourage homicide arising from such beliefs. The same brother that was killed in this case might have been useful in looking after some of the children she is talking about if she hadn't killed him. We want a message to go out that those who believe in witchcraft and kill their victims in a summary fashion of this kind can expect the courts to deal with them in

an appropriate manner. The 8 years here was quite suitable to afford the appellant an opportunity to go and reflect upon what she did; but above all as a message to others who want to kill those they suspect of witchcraft. The appeal cannot succeed. It is dismissed.



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**M.M.S.W. Ngulube,
CHIEF JUSTICE.**



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**E.L. Sakala,
SUPREME COURT JUDGE.**



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**P. Chitengi,
SUPREME COURT JUDGE.**