



Summary of Judgment

R v Kalala [2015] VSC 713

11 December 2015

NOTE: This summary is necessarily incomplete. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for sentence.

Today the Chief Justice sentenced Balenga Kalala to 9 years' imprisonment with a non-parole period of 6 years after he pleaded guilty to inciting the murder of his de facto partner, Noela Rukundo. The maximum sentence for incitement to murder is life imprisonment.

The Chief Justice acknowledged that Mr Kalala had expressed regret, but her Honour did not consider remorse to be a particularly significant sentencing factor in this case: [41]. Mr Kalala's early guilty plea nevertheless entitled him to a discount under s 6AAA of the *Sentencing Act 1991*: [42]. The Chief Justice said that were it not for Mr Kalala's guilty plea she would have sentenced him to 10 years and 6 months' imprisonment with a non-parole period of 7 years and 6 months: [49].

Mr Kalala is a refugee from the Democratic Republic of the Congo. He had been in a relationship with Ms Rukundo for 10 years. In January this year, Ms Rukundo travelled to Burundi while Mr Kalala remained at home to look after the children.

Whilst Ms Rukundo was away, Mr Kalala was told by an acquaintance that she was seeing another man. Based on this unconfirmed account, combined with frustration at not being able to access a certain bank account in Ms Rukundo's absence, Mr Kalala became jealous and angry and asked his friend in Burundi, Kigwasa Fredy, to arrange for her to be killed. He transferred Mr Fredy approximately \$6,800 via Western Union as payment.

Ms Rukundo was kidnapped at gunpoint from outside her hotel in Burundi, and taken to an unknown location. Her kidnappers informed her that Mr Kalala had paid them to kill her, but that for various reasons they would not do so.

The kidnappers released Ms Rukundo two days later. Upon her release they gave her a memory card containing recorded telephone conversations they had had with Mr Kalala in relation to her proposed murder, as well as the Western Union receipts for the cash transfers to Mr Fredy. Ms Rukundo then returned to Melbourne and confronted Mr Kalala, who made full admissions to Ms Rukundo, to the local pastor and later to police.

The Chief Justice considered a victim impact statement made by Ms Rukundo, and found Mr Kalala's offending to have had a devastating effect on her: [31]-[32].

The Chief Justice regarded Mr Kalala's offending as a particularly grave example of incitement to murder, as it involved a great breach of trust, was premeditated and was motivated by unfounded jealousy, anger and a desire to punish Ms Rukundo: [35]. Her Honour said that 'family violence is an issue with which our community is tragically plagued' and that such behaviour cannot be tolerated: [37]. The Chief Justice said general deterrence was an important consideration and that in sentencing Mr Kalala the Court must send a clear message to this effect: [37].

The Chief Justice considered Mr Kalala to have good prospects of rehabilitation given that he is educated, has no prior convictions and is otherwise of good character: [39]-[40].