**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**AT BUKOBA**

**ORIGIONAL JURISDICTION**

**(BUKOBA DISTRICT REGISTRY)**

**CRIMINAL SESSIONS CASE NO. 58 OF 2016**

**THE REPUBLIC**

VERSUS

**SAMWEL SAUL0 @IKULA**

**JUDGMENT**

**16/03/2020 & 18/03/2020**

**Mtulya, J.:**

The circumstances giving rise to the present case are stress-free and straight forward. Sometimes in late July 2015, Mama Joan Saulo Ikula (Mama Ikula) was arrested by the police for allegedly causing the death of Mr. Buberwa Fidelis (the deceased) on the 22nd day of July 2015 at noon hours at Kilimahewa, Kashai area within Bukoba Municipality in Kagera Region. Mama Ikula arrested and released several time by the police officers based at central station, Bukoba.

On 24th July 2015, one of his brothers, Samwel Saulo @ Ikula (the accused) decided to make follow-up at the police station on his own volition to know what is transpiring to his sister. However, the

police officers at the station informed the accused that he is connected to the death of the deceased occurred on 22nd July 2015. At the police station, the accused was locked-up, interrogate and recorded his statement. In the statement, the accused denied any involvement in the killing of the accused.

When the accused was in the police lock-up, his neighbor Mr. Subira Kabyemela (PW6) was also arrested in connection to the same death of the deceased and brought before the police station and was detained in the same lock-up where the accused was detained. After completion of the investigation, Mama Ikula and PW6 were released, but the accused was charged and prosecuted for murder in this court.

The information for murder which was filed in this court shows that the accused is allegedly to have murdered the deceased on the 22nd day of July 2015 at noon hours at Kilimahewa Kashai area within the Municipality of Bukoba in Kagera Region, contrary to section 196 of the Penal Code [Cap. 16 R.E. 2002] (the Code). The facts which were prepared by the Republic under section 192 of the Criminal Procedure Act [Cap. 20 R.E. 2002] (the Act) shows that the deceased was walking near the accused's family house and was suspected to be

a thief and was questioned on where he lives. The deceased replied that he lives around the area, the reply which did not satisfy the accused and started to beat the deceased on several parts of the body, including the head. The facts also show that the accused attacked the deceased on the head by use of stone which caused him serious head injury. The deceased was then transported to Kagera Regional Hospital by assistance of his relatives where he received treatment but immediately thereafter expired. The deceased's body was examined by medical doctor and postmortem report was prepared.

When the case was scheduled for Preliminary Hearing on 1st September 2016 and during hearing yesterday, 12th March 2020, and when the information was read over and explained to the accused, the accused pleaded not guilty of the charge of murder of the deceased. In order to establish the murder against the accused, the Republic represented by learned State Attorney, Mr. Grey Uhagile summoned and marshalled a total of six (6) witnesses and tendered three (3) exhibits. On the other hand, the defense side under legal representation of learned counsel Mr. Lameck Samson, presented the accused in defense and did not tender any exhibit in this court.

Mr. Uhagile summoned and marshalled Rosemary John, mother of the deceased as the first prosecution witness (PW1) for the Republic who testified that his son expired on 23rd July 2015 and his death was a result of injuries inflicted to him by the accused and Mama Ikula. PW1 testified that she was informed by the deceased that it was the accused and Mama Ikula who launched attacks on him. According to PW1, when she arrived at the scene of the crime, she found his son already beaten and was bleeding on the head, hands, nose and other parts of the body. PW1 testified further that at the scene of the crime there were many people, including the accused and Mama Ikula, but it was a lady shopkeeper who intervened and rescued her son from the fight. Finally, PW1 stated that they organized transport to police and later to hospital where the deceased expired during treatment.

Mr. Subira Kabyemela, a neighbor and eye witness of the attack against the deceased was summoned and marshalled as prosecution witness number two (PW2) in this case. In his testimony, PW2 stated that on 22nd July 2015, he was at his residence in Kilimahewa and witnessed the accused attacking the deceased by use of stone. PW2 testified that he cannot describe the size of the stone, but it was

handled by the accused in his right hand whereas the left hand was holding and pressing down the deceased. PW2 also testified that he cannot recall how many times the stone attacks landed on the deceased's head.

PW2 testified further that at the scene of the crime there were many people, but it was the accused who was fighting with the deceased. PW2 testified further that he spent ten (10) to fifteen (15) minutes witnessing the fight without any intervention and no any other present at the scene of the fight intervened and separated the accused from the deceased. PW2 testified that he did not take steps to intervene the fight because he did not know the source of fight, but later he heard from the people that the deceased was a suspected thief.

The prosecution side also marshalled Mr. Jose Magembe Maturi, a resident of Kashai as prosecution witness number three (PW3). His testimony is short and clear. He testified that on 22nd July 2015 while at his residence, he was informed by Sekele Osogo that there was a person attacked in a neighborhood and decided to go to the scene of the crime. At the scene of the crime, PW3 found three persons,

namely: the deceased who had minor bleeding on head and hands, the accused who was sitting beside the deceased and a journalist, and all three persons were sitting in a toilet's sink. PW3 testified further that he questioned the deceased of what happened, and the deceased stated to have been attacked by the accused because he was suspected thief. Finally, PW3 testified that he then called deceased's relatives who came and transported the deceased to hospital.

The forth prosecution witness was Detective Corporal Fredrick numbered E. 8892 from Biharamulo Police Station. PW4 testified that on 23rd July 2015, he was assigned an investigation file for grievous bodily harm of the deceased caused by the accused and was ordered to cooperate with Detective Constable Emmanuel numbered G. 3681. PW4 testified that before preparation of the investigation diary, they were informed that the accused expired at Ndolage Hospital and the body was transported to Kagera Regional Government Hospital (the Hospital) for preservation and examination purposes.

PW4 testified further that they went to the Hospital on 23rd July 2015 and the body was examined on 24th July 2015 by a medical doctor named Mayala and Postmortem Examination Report (the

Report) was prepared. PW4 testified after the Report, he continued with investigation and got several witnesses and wrote their statement, include the accused who admitted involvement in the killing of the deceased. Finally, PW4 stated that they visited the scene of the crime at Kashai and sketched a map of the scene of the crime which was admitted in this court as exhibit P.1.

Detective Constable Emmanuel numbered G. 3681 working at central police station Bukoba was summoned as prosecution witness number five (PW5) and testified that on 23rd July 2015 he was assigned file numbered BU/IR/2710/2015 for investigation of events that occurred on 22nd July 2015 at Kilimahewa area concerning the accused and deceased. PW5 testified that he was assigned and ordered to cooperate with Detective Corporal Fredrick in investigation of the matter. PW5 stated further that on 22nd July 2015, when the deceased was brought before the police station, he wrote statement and mentioned the accused as his attacker and the statement was admitted in this case as exhibit P.2. According to PW5, the accused was brought before the police station by his brother named Mwesiga Kigoi on 24th July 2015 and PW5 recorded his statement, in which the accused admitted involvement in the attack against the deceased.

With regard to cause of death and extent of injuries, the prosecution side invited Dr. John Mayala, a medical doctor working at the Hospital and marshalled him as prosecution witness number six (PW6). PW6 testified that on 24th July 2015, he examined and wrote the Report of the deceased's body which was admitted in this case as exhibit P.3.

The Report shows that the death occurred due to severe head injury with internal bleeding. In Summary Report, the findings at part nine (9) of the Report depicts: *bruises of the frontal head with remain of blood clots on nose*. PW6 did not fill and put clear in the Report several important parts such as the status of external appearance, skull and its contents, the skeletal structures, mouth, pharynx, and esophagus. However, when he was testifying PW6 stated that all other parts in the Report are related to summary as printed in part nine (9) of the Report. When he was questioned on why the Report was made with several parts, PW6 stated that the parts are just repetitions.

PW6 testified further that he assessed the extent of injuries and internal bleeding by examining the extent of blood clots in nose, and in this case bleeding in the nose showed that the deceased was

severally attacked at the front part of the head where there are bruises. PW6 also testified that the deceased's body had no wounds, but bruises. When asked how possible severe head injury may occur in circumstances where the head had bruises instead of wounds, PW6 stated that it is possible to have severe head injury without any wounds. Finally, when he was questioned on how many bruises he has recorded in the Report, PW6 replied to have not recorded any and he cannot remember how many were in the head because it is a while since he examined the deceased's body.

On the other hand the defense called and presented the accused himself (DW1) and did not tender any exhibit before this court. DW1 testified that on the afternoon of 22nd of July 2015 when he was coming from work to his residence and upon arrival at his home, he found the door broken and open whereas the deceased was coming from the door and stood at the house steps. Upon questioned by DW1 as where he lives, the deceased mentioned and pointed the house where the accused lives, something which surprised DW1. DW1 testified further that immediately thereafter the accused pushed DW1 and started to run away from the house. DW1 stated further that he

ran after the deceased and managed to arrest him, but the deceased resisted the arrest hence fight erupted.

According to DW1, he was running after the deceased while making noises, commonly known as *Mayowe* which attracted neighbors. DW1 testified that after arresting the deceased, they started fighting and pulling each other including falling on stones which were present at the area for house construction purpose hence both sustained injuries.

DW1 denied involvement of the killing of the deceased testifying that it was neighbours who came after *Mayowe* who attacked the deceased. DW1 testified further that he went to the police station himself and alone on 24th July 2015 after noting that his sister, Mama Ikula, was troubled by police officers. According to DW1, on arrival at the police station, he was arrested, locked-up, interrogated and wrote statement in which he denied involvement on the killing of the deceased. DW1 finally testified that on 29th July 2015, PW5 escorted him to the Hospital for treatment of injuries sustained during the fight.

In cases like the present one, the Republic has the responsibility to prove beyond reasonable doubt three things existed, namely:

*1. Death of the deceased occurred;*

*2. The death was caused by the accused; and*

*3. The accused caused the death of the deceased with malice aforethought.*

From the testimonies of witnesses brought before this court and exhibits tendered and admitted in this case, there is no dispute with regard to the first issue that the death of the deceased occurred. This is proved by the evidence of all prosecution witnesses, specifically PW6 and exhibit P.3.

With regard to the second issue, the law is certain and settled. Section 62 (1) (a) of the Law of Evidence Act [Cap. 6 R.E. 2002] (the Evidence Act) requires oral evidence to be direct and if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it. In the present case, six witnesses were brought and testified before this court, but only one who testified to have seen the accused attacking the deceased, namely PW2. However, the law under section 143 of the Evidence Act does not mention particular

number of witnesses required for the proof of any fact. This provision has received judicial interpretation from our superior court, the Court of Appeal and has been the practice that a person may be convicted based on evidence of a single witness if court is fully satisfied that the witness is telling the truth (see: **Lusabanya Siyantemi v. Republic [1980] TLR 275** and **Yohanis Msigwa v. Republic (1990) TLR 148**). In the decision of **Yohanis Msigwa** (supra), for instance, the Court of Appeal at page 150 stated that:

> *There was admittedly a lone eye witness in this case. Her evidence is not however detracted from because of that fact alone. As provided under Section 143 of the Evidence Act, of course, no particular number of witnesses is required for the proof of any fact. What were important here were PW1's opportunity to see what she claimed to have seen and her credibility.*

In our case, PW2 testified to have seen the accused attacking the deceased by stone carried at the right hand side of the accused whereas the left hand was holding and pressing down the deceased. However, at one point during the defense hearing, DW1 complained

that PW2 was also arrested and connected to the present case, but was not prosecuted.

The Court of Appeal has already established a rule that evidence of one witness can prove existence of a certain fact, unless there is question of credibility of witness, which in any case relates to telling truth. Again, PW2 stated to have been in the scene of the crime for about ten (10) to fifteen (15) minutes watching the fight without any intervention from any person whereas PW1 stated there was a lady who intervened the fight to rescue the deceased. There is also exhibit P.3 which shows bruises in head which resulted severe head injuries and evidence of PW6 who said the deceased had bruises, but there was no wounds to correlate with the testimony of PW6.

I think, it is not possible, by any standard, a person to be attacked by stone on head for about ten (10) to fifteen (15) minutes without showing wounds or any cut. In any case, what is stated in the Report does not match with the evidence of PW2 and PW6. May be PW6 merely concentrated on what he believed to be the cause of death and failed to examine the body carefully to see and record the

injuries. This Report is of little value and cannot be heavily relied to establish malice aforethought in the present case.

Again, there is dying declaration of the deceased admitted in this case as exhibit P.2. In the exhibit the deceased before his expiry stated to have been attacked and injured by use of stones by the accused on his head, neck, ribs and hand. However, PW6 did not testify to have seen bruises or wounds in neck, ribs or hand and exhibit P.3 did not depict any record on skull, skeletal structure and esophagus.

The rule in dying declaration is that it is unsafe to base a conviction on dying declaration without corroboration (see: **Adrian Masongera v. Republic, Criminal Appeal No. 77 of 1990**, **Republic v. Marwa (1971) HCD 473** and **Pius Jasunga v. Republic (1954) 21 EACA 331**). However, in the present case, there was corroboration from PW1, PW2 and PW3. PW1 and PW3 were told by the deceased of the attack and PW2 was at the scene of the crime and witnessed accused attacking the deceased.

To my opinion, the dying declaration was in fact true, save for the extent of attacks which cannot be substantiated with certainty. Dying

declaration of this nature cannot be relied to convict the accused (see: **Florence Mwarabu v. The Republic, Criminal Appeal No. 129 of 2003**).

During the hearing of this case, the evidence of PW2 and DW1 show in a way there was a fight and pulling of each other which led to bruises to both the accused and deceased. The accused further stated he was taken to the Hospital for treatment sustained during the fight. Considering evidences which were produced in this court, it is correct to state that there was a fight, pulls and pushes. To my opinion, the death was a result of fight between the deceased and the accused.

The law has always been that that where there is evidence of a fight it is not safe to infer malice aforethought. In the present case, both learned State Attorney Mr. Uhagile and defense counsel Mr. Lameck Erasto declined to register their final submissions to test the existence murder or otherwise, which in a way would have tested malice aforethought. However, the test of malice aforethought is enacted under section 200 of the Code and has already received detailed interpretation in the decision of **Enock Kipela v. Republic, Criminal Appeal No. 150 of 1994**. This decision provided seven (7)

factors to be considered by the court in determining malice aforethought. I also request you to give your opinion based on these factors. These factors are stated at page six (6) of the typed judgment, viz:

> *...usually an attacker will not declare his intention to cause death or grievous bodily harm. Whether or not he had that intention must be ascertained from various factors, including the following: (1) the type and size of the weapon, if any used in the attack; (2) the amount of force applied in the assault; (3) the part or parts of the body the blow were directed at or inflicted on; (4) the number of blows, although one blow may, depending upon the facts of the particular case, be sufficient for this purpose; (5) the kind of injuries inflicted; (6) the attackers utterances, if any, made before, during or after the killing; and (7) the conduct of the attacker before and after the killing*

In the **Enock Kipela's** case (supra), the accused used a big stick wielded by both hands, and delivered three blows on the head and chest. In totality of evidences presented in that case there was no

room for divergent views hence their Lordships convicted him of the murder. In our case, it is stated that it was a stone of small size that can be handled in one hand. However, the stone was never produced in this court to justify its nature and size to see whether it is deadly weapon or not. The amount of force was never ascertained as it was only stated of bruises, nor wounds or any cut was established.

The evidence from the Report show that bruises were spotted on the deceased's head, but the deceased stated the infliction of injuries were in the head, neck, ribs and hand. Also there is no number of blows established in the present case. PW2 stated he was watching the fight for about ten (10) to fifteen (15) minutes, but PW6 stated he cannot establish the number of bruises. With injuries inflicted, the Report showed bruises on head, and no any other part of the body was injured. Again, apart from *Mayowe* of thief uttered by the accused before arrest of the deceased, no any other evidence which show during or after fight the accused stated ill-will of killing the deceased. Finally, the accused did not escape from his residence, instead reported to the police on his own volition, either alone or with his brother. All these circumstances show doubts in prosecution case.

In circumstances like the present one where there are doubts and evidence of existence of the fight, our superior court has been stating that it is not safe to infer malice aforethought. A good example of the statements are found in the decisions of **Mathayo Mwalimu and Another v. Republic, Criminal Appeal No. 147 of 2008**, at page 7 and **Stanley Anthony Mrema v. Republic, Criminal Appeal No. 180 of 2005**, at page 14 where the Court of Appeal stated that the law as always been that where there is evidence of a fight it is not safe to infer malice aforethought.

In **Mathayo Mwalimu's** decision (supra) there was a fight but the accused was drunk, in our case the accused was not drunk. However, the wording of the Court at page 7 of the typed judgment has no qualification whatsoever. For easy understanding, I quote their words:

> *It is evident from the above statements that there was a fight between the appellants and deceased.* ***The law has always been that that where there is evidence of a fight it is not safe to infer malice aforethought****. In this regard, it will always*

*be safe to ground a conviction of manslaughter instead of murder. For this reason, we think that the High Court ought to have convicted the appellants of manslaughter (emphasis added).*

Before **Mathayo Mwalimu** (supra) and **Stanley Anthony Mrema** (supra) decisions, the Court of Appeal since 1980s has been stating this position. When death occurs as a result of a fight, unless there are very exceptional circumstances, the person who caused death is guilty of manslaughter and not murder. There is a large bundle of precedent to the position in our higher courts (see: **Tunutu Mnyasule v. Republic [1980] TLR 204, Juma G. Timbulu v. Republic, Criminal Appeal No. 27 of 1991, Saidi Kipanga v. Republic, Criminal Appeal No. 28 of 1991, Moses Chichi v. Republic [1994] TLR 222, Jofrey K. Ndunyela v. Republic, Criminal Appeal No. 72 of 1991** and **Jackson Mwakatoka and Two Others v. Republic (1990) TLR 17**). In **Tunutu Mnyasule** (supra) and **Moses Chichi** (supra), for instance, the court stated that where death occurs as a result of a fight an accused should be found guilty of lesser offence of manslaughter.

In **Jackson Mwakatoka and Two Others** (supra), the facts in brief were that: three appellants were jointly charged and convicted of the murder of the deceased, Amos Sanga contrary to section 196 of the Code and sentenced to death by the High Court. They were dissatisfied with the finding and sentence of the High Court and preferred an appeal to the Court of Appeal. In the Court of Appeal, Justices of Appeal discovered that the murder was caused by a fight.

The evidence which was produced before the High Court were that the first appellant was identified as being present when the second and third appellant attacked the deceased on the fateful night and thus participated in the murder under the doctrine of common intention, and that the second appellant was identified as one of the attackers, that the third appellant had confessed to have hit the deceased on the head with a stone, and that the third appellant's repudiation of the confession required no corroboration for his confession to support his conviction.

The Court of Appeal allowed the first and second appellants' appeal and quashed the decision of the High Court. The third appellant's conviction for murder was substituted for manslaughter.

The holding of the Court of Appeal in regard to the three appellants were that:

> *(i) mere presence of the first appellant at the scene of the crime was not sufficient to invoke the doctrine of common intention and implicate him to the murder;*
>
> *(ii) when death occurs as a result of a fight unless there are very exceptional circumstances, the person who causes death is guilty of manslaughter and not murder; and*
>
> *(iii) repudiated confession though as a matter of law may support a conviction, generally requires, as a matter of prudence corroboration.*

This case shows, apart from other issues, existence of a fight is very important in determining malice aforethought. Again, in the present case, the evidence shows that few days before the attack on the deceased, thieves stole from accused house a set of television and decoder. To my opinion, I think the accused was in a tense, suspicious and acted under stress of the theft previously occurred or heat of passion generated by the ensued fight.

I sat with three Hon. Assessors during the hearing of this case and I invited them to give their opinions on the case. All had similar interpretation of the case. For purposes of easy understanding, I will quote their opinion albeit in brief:

**Assessor 1:** My Lord, the evidence of PW6 and his Report do not match. I also noted that the accused had no malice aforethought to kill the deceased. My Lord, if he intended to kill with malice aforethought, he would have not made *Mayowe*. I think there was a fight. I pray this court to convict the accused with the offence of manslaughter.

***Assessor 2:*** *My Lord, PW2 said to have seen the deceased being beaten by stone with the accused. PW6's evidence is contrary to what have been seen by PW2. My Lord, the accused person is not responsible for murder.*

***Assessor 3:*** *My Lord, PW2 said he was at seven foot-steps distance and saw the accused attacking the deceased several time. I am asking if that is possible in our daily conduct. It is not possible to see one*

*person attacking another neighbor without intervention for ten (10) minutes. My Lord, PW6 said he saw minor bruises whereas the weapon used in the attack was stone. A stone attack cannot lead to bruises, but wounds. My Lord, accused and deceased did not know each other before occurrence of the event. Therefore, I cannot see any malice aforethought or ill-will between them. My Lord, there was a fight and it should be interpreted as such. I do not see any event which show that the accused killed the deceased with malice aforethought.*

To my opinion, from the evidence produced in this court and opinions of Hon. Assessors, I agree with them all. The accused is connected to the killing of the deceased, but killed the deceased without malice aforethought. He will be convicted of lesser cognate offence of manslaughter, although not charged with it.

This is because manslaughter is minor offence of cognate character, the same genus and species to murder. This is allowed by law under section 300 of the Act and practice of courts (see: **Tambi**

**Omari v. Republic, Criminal Appeal No. 78 of 2018, Christina Mbunda v. Republic (1983) TLR 340, Ali Mohamedi Hassani Mpanda v. Republic (1963) EA 296** and **Robert Ndecho and Another v. Republic (1951) 18 EACA 171**). For instance in the decision of **Robert Ndecho and Another** (supra), their Lordships at page 174 stated that:

> *Where an accused person is charged with an offence, he may be convicted of minor offence, although not charged with it, if that minor offence is cognate character, to wit, of the same genus and species.*

In the present case the accused is charged with the offence of murder, but facts and evidence produced in this court prove existence of manslaughter. The accused may be convicted of a minor offence of manslaughter although he was charged with the offence of murder.

Having said so and for the foregoing reasons, I find the death of the accused occurred and was caused by the accused, but there is no sufficient evidence to establish malice aforethought. I therefore convict the accused with lesser offence of manslaughter, which is in

the same cognate character and species to murder as required by the law.

It is accordingly ordered.

F.H. Mtulya

**Judge**

18/03/2020

## ANTECEDENTS

**Mr. Uhagile:** My Lord, the Republic has no criminal record of the accused. But I pray for serious penalty to the accused. My Lord, I have reasons for saying so:

1. The accused did not follow laid down procedure after assuming the deceased was a thief;
2. To discourage events like what the accused did;
3. Nature of the weapon used and where he attacked. This person used stone and attacked on the head. Head is dangerous and vulnerable place of the body; and
4. Justice to the deceased. My Lord, the deceased was a young person who could have assisted his family and this nation, but his life was cut short by the accused.

F.H. Mtulya

**Judge**

18/03/2020

## MITIGATION

**Lameck:** My Lord, when this court thinks of the sentence of the accused, it may think of lenient penalty because of the following reasons:

1. Circumstances under which the accused committed to offence:
    i. My Lord, few days before the attack, there was theft instance;
    ii. My Lord, time in which the offence was committed question and answer and running of the deceased from the scene of the crime; and
    iii. My Lord, the fight and pushes occurred at the stones area.
2. Conduct of the accused after commission of the offence. My Lord, the accused did not escape. He went alone to Police and recorded the statement. My Lord, the statement also correspond to what he stated in this court;
3. Time spent in Police or custody my Lord, the accused went to the Police Station on 24th July 2015, until today he has not seen his home. Now is almost four years or five years he has been under

restraint. My Lord, the accused he has leant. If not sentenced, it has been already a lesson to him;

4. Absence of criminal record. My Lord, the Republic stated the accused has no criminal record. My Lord this is his first time and it was unfortunate. At least it was second or habitual offender, it would have been different;
5. Evidence which relate to the death of the deceased as per Exhibit P.3. This exhibit show bruises only;
6. The deceased is a father of one wife and two children living in Mbeya and they all depend on him for their social welfare, including school for the children; and

Finally my Lord, this accused is not part of habitual offenders, and the nature of weapon used was not reflected in the Postmortem Examination Report. My Lord, there was no any prove of malice aforethought save for theft *Mayowe* only which intended to arrest the deceased. That is all my Lord.

F.H. Mtulya

**Judge**

18/03/2020

## SENTENCE

I have heard submissions and prayers made by learned State Attorney, Mr. Uhagile in antecedents and leaned defence counsel Mr. Lameck Erasto. Mr. Uhagile submitted that the accused took the law in his own hands and did not follow the laid down procedures; nature of the weapon used as stone and it was landed on vulnerable part of the body, head and the need to do justice to the deceased. Mr. Uhagile's prayer is to discourage events like the present is to offer a stiff sentence to the accused.

On the other hand Mr. Lameck Erasto for the defence submitted that the accused is not habitual offender, circumstances under which the offence was committed, including existence of fight, conduct of the accused, evidence of P.3 and the accused is a father of two children. Finally Mr. Lameck prayed for lenient sentence.

In the present case, the accused is prosecuted for causing death of deceased and the penalty in offence like the present one is death by hanging. Again, death caused by another human being by whatever reasons cannot be allowed in our communities. The accused had several options after meeting the deceased in his house and suspected

him to be a thief, such s report to Mtaa Chairman or any Police Station. Anyone who does that must expect long custodial sentence or death by hanging upon conviction.

However, I understand the accused is the first offender and has spent more than four years in custody and considering all that submitted in this case, I hereby impose sentence to four years imprisonment from the date of delivery of this Judgment, 18th March 2020.

It is accordingly ordered.


F.H. Mtulya

**Judge**

18/03/2020

This Judgment was delivered under the seal of this court in open court in the presence of learned State Attorney Mr. Grey Uhaglle for the Republic, Mr. Lameck Samson for the defense, and in the presence of the accused, Mr. Samwel Saulo @ Ikulo.

Honorable assessors thanked and accordingly discharged.


F.H. Mtulya

**Judge**

18/03/2020