

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA
CRIMINAL SESSION CASE NO. 14 OF 2017
THE REPUBLIC
VERSUS
NAKULINGA ^D/o NDANGALI

RULING

***Date:** 09/03/2020*

Dr.A.Mambi, J.

The accused was arraigned in this court for the offence of **Manslaughter c/s 198 and 199 of the Penal Code, Cap. 16 [R.E. 2002]**; Having heard the prosecution facts and the accused plea of guilty for manslaughter, The accused was convicted for committing an offence of attempted infanticide under Section 199 read together with Section 198 (Manslaughter) of the Penal Code, Cap. 16 [R.E. 2002. Since the accused had pleaded guilty on the charge of manslaughter and basing on the charge and flanking facts from the prosecution, the accused was convicted of an offence of manslaughter c/s 195 of the Penal Code Cap 16 [R.E.

2002].Section 195 of the *Penal Code Cap 16 [R.E. 2002]* provides that:

*“(1) Any person who by an unlawful act or omission causes the death of another person is guilty of **manslaughter**.*

(2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether the omission is or is not accompanied by an intention to cause death or bodily harm”.

On the other hand, Section 199 provides as follows:

*Where a woman by any willful act or omission causes the death of her child, being a child under the age of twelve months, but at the time of the act or omission she **had not fully recovered from the effect of giving birth to the child, and for that reason or by reason of the effect of lactation consequent upon the birth of the child the balance of her mind was the n disturbed**, she shall, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, be guilty of infanticide, and may, be dealt with and punished for the offence as if she had been guilty of manslaughter of the child”.*

In our case at hand, the accused attempted to commit an offence of manslaughter through infanticide by throwing the child of under twelve months at the bush for the purpose of causing the death of that child.

It is on the records that the accused having delivered a baby stayed with her baby for three weeks. The accused after realizing that the father of the baby denied the child, decided to attempt to kill her own baby. Fortunately, she didn't succeed to kill the baby and decided to throw that baby at the bush before one Samaritan discovered the baby alive. The accused admitted to have

committed an offence without any intention. It appears the accused committed an offence at the time when she had not fully recovered from the effect of the birth and balance of her mind was disturbed.

Before sentencing the accused, the prosecution submitted that they have no any previous criminal records for the accused. The State Attorney Ms. Sara thus prayed this court to consider the punishment for the accused. The Defence through the defence Counsel Mr. Chapwa prayed mitigation to this court basing on the various reasons. Having convicted the accused with an offence of manslaughter, I will now consider the appropriate sentence.

I have carefully and respectively considered the submissions from both parties including mitigation from the defence. I have also read the facts and the circumstance of the death of the deceased to enable me to decide the appropriate sentence.

I will also refer the relevant provisions of the Penal Code Cap 16 [R.E.2002] which seem to set down key principles and conditions on how malice aforethought can be said to have been established to indicate the accused internationally committed the offence which he stand incriminated. Under section 200 of the Penal Code Cap 16 [R.E.2002] malice aforethought is said to be established on proof of any of the following circumstances:

- (a) an ***intention to cause the death*** of or to do grievous harm to any person, whether that person is the person actually killed or not.
- (b) ***knowledge*** that the act or omission causing death will probably cause the

death of or grievous harm to some person, whether that person is the person actually killed or not, although that knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.

(c)

The Court of appeal in **Saimon Justine, Mbonea Mbwambo And Elia Mnandi Versus Republic Criminal Appeal No. 53 OF 2006** clearly explained as to how malice aforethought can be established. Malice aforethought has therefore been held to have been manifested by such acts as the culprit's utterances before or after the event, the amount of force used, the nature and size of weapon(s) used, the part of the body to which the attack is directed, the conduct of the accused, the purpose for which the injury or grievous harm is inflicted etc. But all these must be established by evidence.

Looking at the records, there is no doubt that elements (c) and (d), of Section 200 of the Penal Code Cap 16 do not apply. It is clear from the records that the accused person killed her child without malice and this amounts to an offence of manslaughter section 195 of the Penal Code Cap 16 [R.E. 2002].

The offence of manslaughter under which the accused persons stand charged is punishable for maximum of life sentence under section 198 of the Penal Code Cap 16 [R.E. 2002]. Indeed section 198 provides that;

*“Any person who commits manslaughter **is liable** to imprisonment for life”.*

Reading between the lines on the above provision of the Penal Code uses the words “**liable**” that means life imprisonment is the maximum sentence but the court has discretion to impose lesser offence depending on the circumstance of the case. In our case, given the fact that the death resulted from the quarrel and it was the first offence for the accused as admitted by the prosecution under the trial records, the court find it appropriate to consider lesser sentence.

It is on the records that the accused person had a child of eight years old and when they were all sleeping on the same bed the accused unfortunately lied on the child body and caused her death. This show the accused persons had no malice. It has been held in various decisions that where it is proved that the death resulted from fight or quarrel, the court should consider opting for an offence of manslaughter.

I have keenly considered the prosecution facts, submissions from both parties and the defence mitigation to enable me to assess the proper sentence. The maximum sentence for an offence of Manslaughter under which the accused stands charged, is life sentence. However, this depends in the circumstance of the case and the way the deceased died. It is on the records that the accused unintentionally committed an offence while she was at the age of 20 years old. I have also considered Section 199 of the Penal which deals with conviction for infanticide in the cases like the one hand. I have also taken into account the time spent by the accused at remand prison (four years). Basing on those factors and the

circumstance of the deceased death, I find it proper for the accused person to undergo the following sentence.

SENTENCE

The accused is sentenced in terms of **Section 38(2) of the Penal Code Cap. 16 [R.E. 2002]** where this court orders absolute discharge to the accused.



A handwritten signature in black ink, appearing to be "A. J. Mambi", written over a horizontal line.

DR. A. J. Mambi
Judge
09.03.2020

Ruling delivered in Chambers this 9th day of March, 2020 in presence of both parties.

A handwritten signature in black ink, appearing to be "A. J. Mambi", written over a horizontal line.

DR. A. J. Mambi
Judge
09.03.2020

Order: The right of Appeal is explained.

A handwritten signature in black ink, appearing to be "A. J. Mambi", written over a horizontal line.

DR. A. J. Mambi
Judge
09.03.2020