

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

(IN THE DISTRICT REGISTRY)

AT MBEYA

CRIMINAL JURISDICTION

SESSION CASE NO. 91 OF 2016

REPUBLIC

VERSUS

1. DOTTO S/O BEATUS

2. SIMON S/O NENJE

RULING

Date: 17. 03. 2020

Dr. A. J. Mambi, J.

This Ruling emanates from the accused admission on the charge of manslaughter. The accused Persons (**DOTTO S/O BEATUS & SIMON S/O NENJE**) were earlier charged with murder but in their plea, they admitted to have caused the death of the deceased without malice. The prosecution had no objection on the accused admission for an offence of manslaughter. The prosecution read the facts on charge of Manslaughter and all the accused admitted the facts. The prosecution facts briefly show that the accused did

murder the deceased one ALFRED S/O MASHIMINI @ ALFRED MASHINI on the 2nd of June in 2016 at Matanial Village within the District of Chunya , Mbeya region.

The accused persons had pleaded guilty on the charge of manslaughter and basing on the charge and flanking facts from the prosecution. Following their own plea, the accused were convicted of an offence of **manslaughter c/s 195 of the Penal Code Cap 16 [R.E. 2002]** as indicated under the proceedings. The convictions against the accused persons is found under the proceedings of this court. For easy reference I wish to reproduce the whole provisions under which I convicted the accused persons. Indeed, 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”.

Having convicted the accused, the sentence followed thereafter as indicated under the same proceedings. Before sentencing the accused, the prosecution submitted that they have no any previous criminal records for the accused. The State Attorney Mr. Kihaka thus prayed this court to consider the punishment for the accused. The Defence through the defence Counsel Ms. Mgaya and Grald Msengesi 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.

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 persons were among the group of people having with the deceased who was alleged to be the habitual thief. On the particular date the deceased was arrested and while trying to escape he met the group of people and fight with the deceased but unfortunately such fight led to his death. The death was also caused by the mob justice from the group of angry people. 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 also taken into account the time spent by the accused persons at remand prison (six years). Basing on those factors and the circumstance of the deceased death, I find it proper for the accused persons to undergo the following sentence.



SENTENCE

In terms of **section 38** of the **Penal Code Cap 16 [R.E. 2002]** I order the accused persons for absolute conditional discharge.

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

Dr. A. J. MAMBI

JUDGE

17. 03. 2020

Ruling delivered this day of 17th March 2020 before all parties.

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

Dr. A. J. MAMBI

JUDGE

17. 03. 2020