

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA**

**AT TARIME  
(ORIGINAL JURISDICTION)**

**CRIMINAL SESSIONS CASE NO. 90 OF 2020**

**THE REPUBLIC**

**VERSUS**

**SAMSON OKIRI @ OYOKO**

**RULING**

*16<sup>th</sup> and 16<sup>th</sup> February, 2021*

**Kisanya, J.:**

The accused person was arraigned for the offence of acts intended to cause grievous harm contrary to section 222(a) of the Penal Code [Cap. 16, R.E 2019]. The particulars of the offence are to the effect that, on 27<sup>th</sup> February, 2019, at Oliyo Village within Rorya District, with intent to maim, the accused person unlawful caused grievous harm to one Jonas Owiti Okiri @ Oyoko.

When the matter was called on for preliminary hearing on 2<sup>nd</sup> February, 2021, the accused person pleaded not guilty to the offence. It was therefore scheduled for hearing today, where the accused person has pleaded guilty to the offence. Therefore, he has been convicted as charged upon admitting the facts read over by the prosecution.

In terms of the said facts, the accused and the victim are biological brothers. The offence was caused by a dispute over a family land. The accused person considered the victim as an alien. Therefore, in a company of his son, the accused person attacked the victim with a panga and club at different parts of his body. The victim sustained injuries on his head, neck and hands whereby, his small finger to the left hand was chopped off.

The prosecution stated that the accused person had no previous criminal record but prayed for stern sentence which will be a lesson to the accused person and the society at large. On the other side, the defence prayed for a lenient sentence on the grounds that: One, the accused person is a first offender. Two, the accused has pleaded guilty to the charge. Three, the accused is the biological brother of the victim. Four, the accused was also stabbed by the victim. Five, the accused has 6 children, a wife and a disabled mother to whom they all depend. Six, the accused has already resolved his differences with the victim.

The offence of acts intended to cause grievous harm attracts the maximum sentence of life imprisonment. Thus, the sentence imposed by the Court depends on the circumstances of each case.

In this case, the factors that the accused person is the first offender and has pleaded guilty to the offence entitle him to a lenient sentence. It is generally accepted that, the remorse or repentance expressed in a plea of guilty is a

mitigating factor which has to be given weight. See also **Juma Mwiko Muhere V. R. CAT** Criminal Appeal No. 211/2014 when the Court of Appeal held that:

*"First offenders who plead guilty to the charge are actually sentenced leniently unless there are aggravating circumstance."*

It is in evidence that the accused person used lethal weapon (*panga*) and club. Panga is a dangerous weapon. Further, both weapons were directed to sensitive parts of the body to wit, head and neck. As if that was not enough, the victim's small finger was chopped off. The Medical Examination Report (PF3) (Exhibit P2) shows that the victim will experience complications related to nerve injury or inability to fully turn the neck.

This Court (Samatta, J., as he then was) in **Tabu Fikwa vs, R** [1988] TLR 48, considered further that an accused person is also member of the society and went on to hold that, if his interest and those of society have reconciled the Court should embark on that course. Having considered that this offence was committed due to the dispute over a family land, I am of the humble view that the mitigation that, the accused person has solved the dispute with the victim (his brother) should also be taken into account.

### **SENTENCE**

In view of the above factors, I will sentence the accused to a lenient sentence of one year imprisonment, which is suspended on the condition that, he shall not commit a similar offence or an offence of grievous harm within a period

of twelve months. In addition, having considered the nature of injuries sustained by the victim, the Court hereby order the accused person to pay compensation of one million and five hundred Tanzania shillings (TZS. 1,500,000) to the victim.

In the end, the Court proceeds to set the accused at liberty and order his immediate release from remand upon satisfying the conditional discharge. Order accordingly.



  
E.S. Kisanya  
JUDGE  
16/02/2021

**Court:** Ruling on sentence delivered this 16<sup>th</sup> January, 2021 in the presence the accused person, Ms. Monica Hokororo, learned State Attorney for the prosecution, and Mr. Onyango Otieno, learned advocate for the accused.



  
E.S. Kisanya  
JUDGE  
16/02/2021