

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

CRIMINAL SESSIONS NO 46 OF 2020

THE REPUBLIC

VERSUS

SAGATI WANJARA.....ACCUSED

JUDGMENT

15 Feb & 11th March, 2021

Kahyoza, J.

Nyamigine Hamis met his demise on the 11th day of December, 2017 at Magunga village. **Nyamigine Hamis's** death was unnatural due to bladder injury. The accused person admitted to cause the death of **Nyamigine Hamis** without malice aforethought. The prosecution took the position that the accused killed **Nyamigine Hamis** with malice aforethought.

Sagati s/o Wanjara, was charged with the offence of murder contrary to **Section 196 and 197 of the Penal Code, Cap. 16 [R.E. 2019]**. It was alleged that on the 11th day of December, 2017 at Magunga village within Butiama District in Mara Region, the accused person murdered one Nyamigine s/o Hamis. The accused person pleaded not guilty to the information of murder.

The prosecution summoned **Pw1** Hassan Ramadhani, a child of tender years who promised to tell truth and deposed that on the 11th day of December, 2017 at Magunga village he was with Ghati, Khamis and **Nyamigine Hamis** grazing herds of cattle near the accused person's land. One cow entered into the accused's grassland. They went to take that cow from Mr. Sagati's grassland. The accused persons chased them. He pursued **Nyamigine Hamis**, caught him and punished him using a hoe handle. **Pw1** Hassan Ramadhani added that the accused person put his leg on deceased person's neck holding him down on the same time beating him with a hoe handle.

Pw1 Hassan Ramadhani deposed that when Mr. Sagati, the accused person was done with the deceased he went back and cut the cow's leg. **Pw1** Hassan Ramadhani and the other children took **Nyamigine Hamis**, the victim, now deceased and left him to road leading to their home place. They left him at that place and went back to collect the herds of cattle.

Pw2 Charles Ibrahim, the agricultural extension officer on his way home saw **Nyamigine Hamis**, the victim, now deceased in agony. He knew him and his father. **Pw2** Charles Ibrahim gave **Nyamigine Hamis** a ride to his home place and left him with his father.

Pw1 Hassan Ramadhani deposed that the victim's father took the deceased to police station where he obtained a PF.3 and took the deceased to hospital. The deceased remained in hospital until he met his demise.

Pw1 Hassan Ramadhani stood about 12 paces watching the accused person administering the beating upon the deceased.

The accused person, **Dw1 Sagati Wanjara** defended himself on oath that on the 11/12/2017 at around 02:30pm saw cows in his maize farm. His farm was close to his house. The cows destroyed his maize plantation. He moved the herds of cattle from his farm. He added that one of the persons shepherding the herds of cattle told him that he was required to undertake agricultural activities within that area. He was aggrieved as the person who rebuked him was very younger. He decided to punish him. He used a stick to beat him. He added that in course of administering the beating that person stop up. Unfortunately, he hit him in the stomach.

Dw1 Sagati Wanjara refuted the evidence that he used a hoe handle to beat the deceased. He denied to cut a cow's leg with a machete. He deposed that he had no machete. He concluded that he killed **Nyamigine Hamis** without malice aforethought.

During cross-examination, **Dw1 Sagati Wanjara** deposed that he administered three strokes onto the deceased. The deceased stood up to run away, the accused person beat him in the stomach. It was unfortunate that the accused hit him in the stomach.

He added that after the incident he met the deceased's father and agreed to pay for the deceased's medical costs. He gave deceased's father 10,000/= to take the deceased to hospital. The agreement was that the accused person must the estimated medical costs of TZS 50,000/=.

The defence advocate, Mr. Philipo submitted that the prosecution failed to prove that the a deceased committed the offence of murder. He submitted that the prosecution did not establish that the accused person

caused the deceased's death with malice aforethought. He stated that the accused did not contemplate that the herds of cattle will destroy his crops and plan to injure the herdsman.

On the other hand, the prosecuting state attorney, Mr. Byamungu submitted that the way the accused person administered of punishment established that the accused person intended to cause grievous harm or death. The accused used a hoe handle which is dangerous weapon. A part of the body injured. He contended that according to **Pw1** Hassan Ramadhani the accused put his leg on the deceased to hold him while beating him on the abdomen part. He left the deceased at that place and went to his affairs. He stated such a behavior is not an indication that the accused person had no malice aforethought.

He added that the accused cut one of a cow's leg. He concluded that the defence did not challenged **Pw1** Hassan Ramadhani's evidence. The defence did not cross examined **Pw1** Hassan Ramadhani on important facts such whether or not the accused person used hoe handle to beat the deceased or whether or not the accused cut one of the cow's leg. He submitted that it is trite law that failure to cross examine a witness on an important matter ordinarily implies the acceptance of the truth of the witness's evidence. To buttress his argument, he cited the **Nyerere Nyague V. R. Criminal Appeal No. 66/2010** CAT at Arusha (unreported) at page 5.

The state attorney concluded that the accused had an intention to kill deceased. He run after the deceased, caught, and beat him using a hoe handle. He escaped after he administered the blow.

In trials like this, the prosecution has to prove beyond reasonable doubt all the elements of the offence of murder, which are; **one**, that the person alleged to have been killed is in fact dead; **two**, that the alleged death was unnatural one; **three**, that the accused before the court is the one who killed the deceased; and **four**, that the killing was done with the intention of either causing death or causing serious bodily injury. That is the killing was done with malice aforethought.

There is no dispute that **Nyamigine Hamis** is dead and that he died on the on the 11th day of December, 2017 at Magunga village. It is also not contested that **Nyamigine Hamis** died an unnatural death. He died from severe loss of blood caused by a cut wound inflicted on his neck. There is no dispute that **Sagati Wanjara** is the one who killed **Nyamigine Hamis**. The only contentious issue is whether the accused person killed the deceased with malice aforethought.

I agree with the prosecution that malice aforethought may be inferred from the circumstances surrounding the commission of the offence. It may be proved directly and indirectly by establishing one of the elements stated under section 200 of the Penal Code or it could be inferred from the circumstances surrounding the killing as decided by the Court of Appeal in **Enock Kipera vs. Republic Cr. Appeal 150/1994**.

It is on record that the deceased's bladder bust due to the beating causing his death. There is dispute that the abdomen part is sensitive area of the human body. I concur with the prosecution that the defence did not contradict **Pw1** Hassan Ramadhani on his testimony that the accused used a hoe handle to beat the deceased. The defence did not cross examined

Pw1 Hassan Ramadhani on that fact. I take it proved that the accused used a hoe handle to inflict a blow to the deceased's abdomen part. Would that establish the accused person's malice aforethought to kill the deceased? I wish to state that it is settled that each case must be decided on its own set of facts.

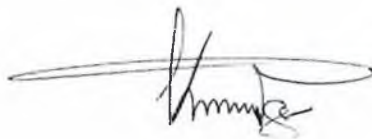
It is on record that the accused after he wounded the deceased he entered into an undertaking to bear costs of treating the deceased. The agreement was between the deceased's father and the accused person. he paid Tzs. 10,000/= out of the agreed costs of Tzs. 50,000/=. I do not read from the accused person's conduct intention to kill or cause grievous harm. I buy the accused person's evidence that his intention was to punish the deceased for his failure to take his herds of cattle, which destroyed his maize farm. Had the accused intended to kill the deceased after he administered the blow he would not have taken trouble to ensure the deceased is treated. In **Enock Kipera vs. Republic** (supra) the Court of Appeal decided that *the conduct of the attacker before and after the killing* must be considered to establish if the attacker had malice aforethought or not.

At the end of the summing up, the ladies and gentleman assessors unanimously opined that the accused person killed the deceased without malice aforethought. They finally opined that the accused is guilty of the offence of manslaughter and not murder.

I totally agree with ladies and gentleman assessors that the accused person killed the deceased without malice aforethought. The accused

person intended to punish the deceased for failure to take care of the herds of cattle. He had no intention to kill him or cause grievous harm.

I, therefore, find the accused person, Sagati s/o Wanjara, caused death of **Nyamigine Hamis** without malice aforethought. Consequently, I find **Sagati s/o Wanjara** guilty and convict him of the offence of manslaughter u/s 195 and 198 of the Penal Code [Cap. 16 R.E. Cap. 16 R.E. 2019].



J. R. Kahyoza,

JUDGE

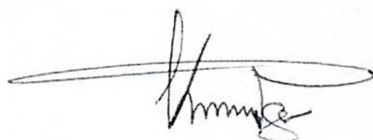
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SENTENCE

The accused person's advocate prayed for a lenient sentence on the ground that the accused person was the first offender and that by pleading guilty to the lesser offence of manslaughter, he is remorseful. I agree with him. However, I find that there are aggravating factors such as the accused person assaulted a younger boy 15 years old, beating him bitterly. The accused person would have taken other available measures for his destroyed crops. He took the law into his own hands.

Going by sentencing guidelines, in this case a weapon, a hoe handle was used to administer a blow. The guidelines provide a minimum sentence of ten years and maximum sentence as life imprisonment. I find a

sentence of 15 years imprisonment to be a just sentence. I therefore, sentence the accused person to a sentence of 15 years imprisonment under section 195 and 198 of the Penal Code.

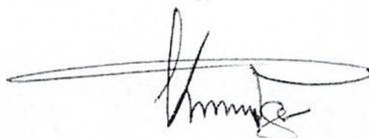


J. R. Kahyoza,

Judge

18/03/2021

Court: Right of appeal explained by lodging a notice of appeal within 30 days from day and lodging a memorandum of appeal 21 days upon receipt of the record of appeal.



J. R. Kahyoza,

Judge

18/03/2021

Court: Ladies and Gentleman assessors thanked and discharged.



J. R. Kahyoza,

Judge

18/03/2021