

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT MWANZA

ORIGINAL JURISDICTION

(MWANZA REGISTRY)

CRIMINAL SESSIONS CASE NO. 118 OF 2020

THE REPUBLIC

VERSUS

1. KAGOSE JOEL

2. EDWARD LUCAS

SENTENCE

The accused persons in this case, namely, Kagose Joel and Edward Lucas have been convicted with the offence of manslaughter on their own plea of guilty.

The maximum sentence for the offence of manslaughter is life imprisonment. However, the Court has discretion of sentencing any other punishment below the said maximum sentence depending on the circumstances of the case.

The prosecution has prayed for harsher sentence as a lesson to the accused and the public at large in order to deter use of mob justice

and taking the law in hands. It is their contention that the accused persons unlawfully curtailed the life of their friend Nyamtengela Nyamtengela @ Tenga, they had no right to so curtail his life. Therefore, they deserve a harsher punishment.

On the other hand, the Counsel for the accused, Mr. Kaijage, learned Advocate, prayed for lenient sentence on the following grounds, namely:-

- i. The accused persons are first offenders as they do not have record of previous convictions of any crime.
- ii. The accused persons have readily confessed and pleaded guilty saving the precious resources of the court namely, time and finance.
- iii. There are no aggravating factors because the accused lived harmoniously in one house with their demised friend, the act of causing his death was a mere mishap.
- iv. They did not use lethal weapons as they just used sticks.
- v. The accused caused the death of their friend Nyamtengela Nyamtengela @ Tenga out of grave provocation. He cited the

case of **Valerian Sail vs. Republic**, [1990] TLR 86 which held inter alia that grave provocation is a very mitigating factor leading to lenient sentence.

- vi. The accused persons have regrated their acts.
- vii. The death ensued during a fight, the first accused was attacked by the deceased who had confessed to have stollen his (first accused) mobile telephone, make Tecno, yet despite the fact that he was the owner he was attacked by the deceased who was a thief of his properties. In such circumstances, he deserves lenience.

This Court has considered the submissions of both sides in aggravating and mitigating factors. It is true that the maximum sentence following a conviction of the offence of manslaughter is imprisonment for life as provided by the provisions of section 198 of the Penal Code, [Cap. 16 R. E. 2019].

The accused has presented mitigating factors praying for lenience in the circumstances of this case. The prosecution has asked for a harsher sentence, in order for the same to act as a lesson to the accused

persons and the public at large. The republic argued that the accused had no right whatsoever to terminate the life of the deceased. It is true that they had not only no such right. The deceased had right to life.

On mitigating factors, it has been argued for the accused persons that they are first offenders; they do not have record of previous convictions of any crime and that they have readily confessed and pleaded guilty saving the precious resources of the court namely, time and finance.

It is true that in some cases, the fact that readiness of an accused to plead has been held as one of the rounds to be considered in sentencing including the **Valerian Sail's case (supra)**.

It was also argued that there are no aggravating factors because the accused persons lived harmoniously in the first accused's house, the act of causing his death was a mere mishap; they caused the death of their friend Nyamtengela Nyamtengela @ Tenga, out of grave provocation.

This Court has considered the gravity of the provoking conducts of the deceased to the accused persons and the circumstances under

which the accused persons were attacked by the deceased who apart from being accommodated by the first accused, yet stole his properties. Even after confessing to have stolen the properties of the first accused, the deceased attacked him (first accused) apart from the fact that he was still wearing the clothes and shoes he stole from the first accused, leading to a fight among them. This Court finds that the accused persons were labouring under grave provocation at the time they beat him with sticks which were just picked nearby. Even the parts beaten were buttock, back and hands which are not vulnerable meaning that the accused persons were intended just chastising him only.

The authority in the case of **Valerian Sail's case (supra)** is relevant here. In that case our Superior Court having found that there was grave provocation and considering all the mitigating factor and all the circumstances of the case held a sentence of 9 years, imprisonment was manifestly excessive.

The factors pleaded in mitigation included that the appellant, in occasioning the death, administered only one kick on the deceased, he did not use any weapon; he readily pleaded guilty to the charge; he was remorseful and the deceased was his brother-in-law; he was a first

offender and had been in remand since 1987. Therefore, the sentence was reduced resulting into immediate release from prison.

The circumstances of this case fits the instant case warranting this court to grant lenient sentence. The accused persons are hereby sentenced to four years imprisonment. It is so ordered.




F. K. MANYANDA
JUDGE
11/5/2021