

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT MWANZA

ORIGINAL JURISDICTION

(MWANZA REGISTRY)

CRIMINAL SESSIONS CASE NO. 124 OF 2020

THE REPUBLIC

VERSUS

PASTORY MAJURA

SENTENCE

The accused in this case, namely, Tito Masese Mbassa @ Bujingwa has been convicted with the offence of manslaughter on his 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. It is their contention that the accused unlawfully curtailed the life of his wife, Ester Jeremiah, he had no right to so curtail her life. Therefore, he deserves 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 is a first offender as he does not have record of previous convictions of any crime.
- ii. The accused has 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 with his demised wife, the act of causing her death was a mere mishap.
- iv. The accused caused the death of his wife, Ester Jeremiah, 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. He also cited the case of **Ally Said Kihubatyo vs. Republic** [1990] TLR 137 where the accused had prior knowledge of adultery of his wife with another man later on he found them in flagrante delicto committing sexual inter-course, his wife rebuked him before that man. The Court held that



though the statement was innocent, in the circumstances under which it was uttered could have provoked the accused. It also stated that prior knowledge of adultery does not disqualify him from the defence of provocation. He also cited the case of **John Mayala vs. Republic**, Criminal Appeal No. 345 of 2016 (unreported) where the Court of Appeal of Tanzania at page 14 cited with approval the case of **Juma Mwita @ Nyamihuvi vs. Republic**, Criminal Appeal No. 212 of 2016 (unreported) which provides guidelines in sentencing directing use of common sense.

- v. The accused has regretted his acts, he has lost his beloved wife, he has five children with her, he has repented.

This Court has considered the submissions of both sides on 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 him and the public at large. The public argued that the accused had no right whatsoever to terminate the life of the deceased. It is true that he had, not only no such right but also, he deprived his own children their rights of enjoying motherly love from the deceased.

On mitigating factors, it has been argued for the accused that he is a first offender, he does not have record of previous convictions of any crime and that he has readily confessed and pleaded guilty, thereby 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 lived harmoniously with his demised wife, the act of causing her death was a mere mishap; he caused the death of his wife, Ester Jeremiah, out of grave provocation.

This Court has considered the gravity of the insulting words uttered by the deceased to the accused and the circumstances under

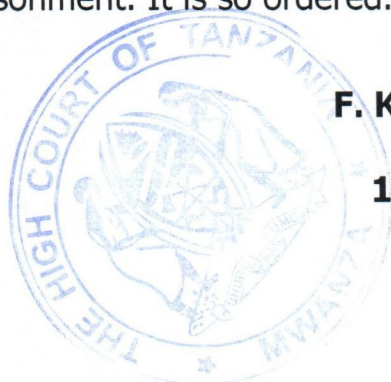


which they were uttered and finds that the accused was labouring under grave provocation at the time he wildly reacted by hitting his wife with a stick which was nearby to him.

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 warrant this court to grant lenient sentence. The accused is hereby sentenced to three years imprisonment. It is so ordered.




F. K. MANYANDA
JUDGE
11/05/2021