

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT MWANZA

ORIGINAL JURISDICTION

(MWANZA REGISTRY)

CRIMINAL SESSIONS CASE NO. 123 OF 2020

THE REPUBLIC

VERSUS

PASTORY MAJURA

SENTENCE

The accused in this case, namely, Pastory Majura 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 an appropriate sentence suiting on the circumstances of this case. It is their contention that the accused unlawfully curtailed the life of his wife Anusiata James @ Zigizigi, he had no right to so curtail her life. Therefore, he deserves a harsher punishment.

On the other hand, the Counsel for the accused, Mr. Molland, 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, hence 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 Anusiata James @ Zigizigi, 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 **Republic vs. Ally Said Kihubatyo** [1990] TLR 137 where the accused had prior

knowledge of adultery of his wife with another man 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 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.

- 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 the same to act as a lesson to him and the public at large. The Counsel for the Republic 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 as a first offender he does not have record of previous convictions of any crime and that the accused has 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)**.

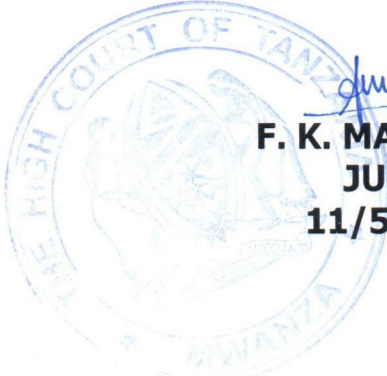
It was also argued that there were no aggravating factors because the accused lived harmoniously with his demised wife, the act of causing her death was a mere mishap; he caused the death of his wife, Anusiata James @ Zigizigi, out of grave provocation.


This Court has considered the fact that the provocation was grave hence he wildly reacted by hitting his wife with a bottle of Konyagi Spirit which he was holding.

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
11/5/2021