

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CRIMINAL SESSIONS CASE NO. 4 OF 2021

*(Originating from Arusha Resident Magistrate's Court of Arusha in
(PI) Criminal Case No. 24 of 2020)*

THE REPUBLIC

Versus

BAKARI s/o SALIM @ MJATA

PROCEEDINGS

Date: 10/11/2021

Coram: D. C. Kamuzora, J.

Ms. Lilian Mmasi, State Attorney for the Republic

The accused person Bakari Salim @ Miata is present under custody and
represented by Ms. Edna Mndeme, Advocate

Court Clerk: Mariamu Kimomwe.

Notice of trial of Information for Manslaughter Contrary to Section 195 of
the Penal Code Cap. 16 R. E. 2002 was duly served in court.

Sgd. D. C. Kamuzora

JUDGE

10/11/2021

Ms. Lilian Mmasy: The matter is for plea taking. I am ready to proceed.

Ms. Edna Mndeme: We are ready to proceed.

Court: Information for Manslaughter read over and explained to the accused person in his own language well understood and he is asked to plea thereto:

Accused: It is true that I caused death without intention.

Court: Enters plea of guilty to the offence of Manslaughter.

Sgd. D. C. Kamuzora

JUDGE

10/11/2021

Ms. Lilian Mmas: Following the plea of guilty to the information by the accused person, I pray to read facts.

FACTS:

- 1) That, the accused person is Bakari Salim Mjata, 25yrs, Male, Sambaa, a Suma JKT Soldier and a resident of Ngaramtoni area within the City, District and Region of Arusha.

- 2) That, the accused stands charged for the offence of Manslaughter Contrary to Section 195 of the Penal Code, Cap. 16 Revised Edition 2019.
- 3) That, the victim in this case is Frank Herman, a male, adult, and was a resident of Bang'ata Village within Arumeru District in Arusha region.
- 4) That, on 25/11/2020 in the morning hours, the accused person was on Patrol at Usa Meru Forest within the District of Arumeru in Arusha Region and he was accompanied by a Co-Suma JKT soldier by the name of Thadei Juventus @ Filbert.
- 5) That, the accused was carrying his gun make Pump Action HP 9-1011757514 with four (4) bullets (round ammunitions) and the co-Soldier was also carrying his own gun with four bullets.
- 6) That, the accused and his co-worker were doing their usual routine of inspecting whoever they found or see in the forest and ask if they had permit to be in the forest.

- 7) That, while in patrol, in the afternoon hours they met one civilian grazing cow in the forest and they asked him if he had permit to graze the cow in the forest but that person did not have any permit.
- 8) That, while interrogating him that civilian was holding a machete/ bush knife and a rope which tied the cow and the accused asked that civilian to put his machete down but he refused and instead did cut the rope making the cow to go away.
- 9) That, the other soldier tried to stop the cow and contain it for purpose of taking the same to the office as the procedure required them to take the cow into the office if found grazing in the forest without permit.
- 10) That, the civilian was still holding the bush knife and the accused ordered him to put down the bush knife but he refused they the accused fired the bullet on the air to make that civilian surrender the bush knife.

- 11) That, when he fired on the air that person lied down while screaming for help and many people went to the scene carrying bush knives.
- 12) That, those other civilians threaten the accused and his colleague and started to attack them.
- 13) That, due to the attack by the civilians, the accused fired again on air to disperse the crowd so that they could take the cow to their office without being harmed.
- 14) That, the attack continued and the accused fired on air the third time to stop the civilians who attempted to grab the gun from his colleague.
- 15) That, one of the civilians tried to attack them with an axe and the accused's colleague punched it with a gun causing the gun handle to break.
- 16) That, the accused and his colleague were overpowered by the crowd and one of the civilians was about to take the gun from the

accused's colleague and in order to serve that situation, the accused who successfully ran from the crowd, fired to the person who was trying to grab the gun from the accused's colleague.

17) That, while trying to serve his colleague, the bullet fired did hit that person causing his death and he was later identified as the victim Frank Herman.

18) That, the report was made to the Police Station who started the investigation immediately.

19) That, the accused was arrested and interrogated and the victim was sent to Hospital where he was confirmed dead.

20) That, the autopsy was conducted on the victim's body whereby it was confirmed that he died from traumatic injury and chest injury (polytrauma).

21) That, four cartridges were recovered from the scene of crime and the sketch map of the scene was prepared.

22) That, the forensic report confirmed that the cartridges recovered from the scene of crime were fired from the accused person's gun, Pump action HP 9-1011757514.

23) That, the charge for manslaughter was preferred against the accused person.

That is all.

Ms. Lilian Mmasi: I pray to tender the sketch map of the scene, Forensic report, Post Mortem Report, two certificate of seizure in respect of cartridges and shotguns and be admitted as part of evidence in this case if no objection from the defense side.

Ms. Edna Mndeme: We have no objection.

COURT: Sketch Map, Forensic Report dated 15/12/2020, Report on Post-Mortem Examination and two certificates of seizure admitted collectively as exhibit PE1.

Sgd. D. C. Kamuzora

JUDGE

10/11/2021

Ms. Lilian: That is all

MEMORANDUM OF UNDISPUTED FACTS:

Accused: I do admit my names as Bakari Salim Mjata, soldier at Suma JKT. I also admit my personal particulars as by tribe I am a Msambaa and I reside at Ngaramtoni. I do admit that I caused death to the deceased but not intentionally. The incident happened when I was on my usual duties and in course of defending my colleague as we were attacked by the crowd then accidentally I fired the gun causing death to the victim. I trying to fire to the victim's hand to stop him from grabbing the gun from my colleague or injuring him. Unfortunately, the bullet did hit on a different part not intended. I did not intend to kill him. All the what is read by the State Attorney are true and I admit the same.

Accused Person Sgd.

Ms. Edna Mndeme, Counsel for the Accused Sgd.

Ms. Lilian Mmas, Prosecuting Attorney Sgd.

Sgd. D. C. Kamuzora

JUDGE

10/11/2021

COURT: Since the accused admitted to the information for Manslaughter and the facts in support of the information in a clear language, this court is satisfied that the accused's plea is unequivocal. I therefore convict the accused person on his own plea of guilty for the offence of manslaughter Contrary to Section 195 of the Penal Code Cap. 16 R. E. 2019.

Sgd. D. C. Kamuzora

JUDGE

10/11/2021

PREVIOUS CRIMINAL RECORDS:

Ms. Lilian Mmas: We have no criminal records against the accused person. We pray this court to punish him in accordance with the law.

MITIGATION:

Ms. Edna Mndeme: My client has admitted to manslaughter. Since his arrest to date, he has not been stubborn and he cooperated with the authorities dealing with this matter.

My client was on his duty to protect people's properties and as the facts reveal, the victim was not supportive after he was found in the prohibited area. He had a gun which he refused to surrender and he is the reason for the problem as he called other people who were armed.

My client tried to stop the chaos by firing an air three times but still the victim was violent. The victim before he started to grab the gun he was not attacked thus, the accused used reasonable force because the victim was about to take the gun from his colleague. He was trying to fire in the victim's hand to serve his colleague and other effects which would have resulted from the incident. That was also well captured in the facts adduced by Prosecuting Attorney. It is true that a life of a person got lost and my client has remorse on what happened until now. But the circumstances of the incident could have attracted more injuries or death on their part or other people.

My client was sent to work and the person found in the forest was necessary to be sent to the office as per the procedures. My client is a hard worker and trust worth person. He is a still young men who is dependable to the nation and his family. He is the only family member

with employment in his family. He did not intend to kill the victim as there was chaos with the crowd that was armed. My client has never committed any Criminal Offence. I therefore pray this court to leniently punish the accused considering our mitigation.

That is all.

SENTENCE:

I have considered the fact that the accused is the first offender. I have also considered the mitigation as submitted by the counsel for the accused person.

From the facts read by the Senior State Attorney and the records of the case, there is no doubt that the accused's conduct was triggered by the intention to defend himself and his colleague from being harmed by a crowd that was armed. The circumstance of the case attracts leniency. In considering that someone's life is lost, the accused cannot be left unpunished. The circumstances of the case and in considering that it was self-defense, the incident attracts the lenient sentence of at least one year in prison. But considering the fact that the accused was performing his duties and the victim was the reason of all what happened, I think that

there is a need to reconsider the custodial sentence against the accused person. Had it been that the victim complied to what he was being told, the accused's intention from the beginning was not to cause any harm to the victim rather to take the cow to the authorities as the procedures to requires. That being the case, the accused himself became victim of the circumstance as he was forced to fire on the victim while he did not intend to do so.

Taking all that in consideration and in considering that the accused pleaded guilty and served time of the court and cost in prosecuting this case, this court consider it prudent to sentence the accused person to oneyear conditional discharge.

Sgd. D. C.Kamuzora

JUDGE

10/11/2021

Court: Conviction and sentence entered this 10/11/2021 in the presence of Ms. LiliaMmas, Senior State Attorney for the Republic, the accused

person and Ms. Edna Mndeme, advocate for the accused. Right to appeal clearly explained.



D. C. Kamuzora

JUDGE

10/11/2021

