

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
SUMBAWANGA DISTRICT REGISTRY  
AT SUMBAWANGA  
(ORIGINAL JURISDICTION)  
CRIMINAL SESSION NO. 1 OF 2020  
THE REPUBLIC  
VERSUS  
DAVID JOHN @ SILWELA**

**JUDGEMENT**

*Date of Last Order: 13/12/2021*

*Date of Judgement: 31/12/ 2021*

**NDUNGURU, J**

Following the mysterious death of Alex Simwanza, the Republic charged David John @ Silwela for intentionally killing him. David John @ Silwela denied to kill Alex Simwanza.

The issues for determination are whether David John @ Silwela killed Alex Simwanza and whether did so with malice aforethought.

The prosecution arraigned David John Silwela with an information of murder contrary to section 196 and 197 of the Penal Code, Cap 16 RE 2019. The prosecution alleged that on 14<sup>th</sup> day of May 2019 at Kasisiwe area within Sumbawanga Municipality in Rukwa Region, the accused

person did murder one Alex Simwanza. The accused person pleaded not guilty.

Now it is not in dispute that Alex Simwanza died unnatural death on the 14<sup>th</sup> day of May 2019 at Kasisiwe area within Sumabawanga Municipality. The post mortem examination report, admitted as Exh. P2, indicated that death was due to fracture of the skull which led to internal bleeding into the brain.

Other fact not in dispute is that the accused person is the deceased brother-in-law.

Given the undisputed facts, only two elements of murder are in dispute; one, whether it is the accused person who killed the deceased; and two, whether he killed him with malice aforethought.

The prosecution's evidence starts with PW1 Detective CPL Thadeo who testified that on 15/05/2019 in the morning hours he was at the office. He was assigned to investigate a case regarding grievous harm. He came to know the victim of grievous harm has passed away later at the hospital called Kristo Mfalme.

He informed OC-CID of the death of the victim, and then the file of grievous harm was substituted to murder case.

He then started looking for accused person and as well to collect other evidence.

The offender was David John @ Silwela. By then he said David John @ silwela was not yet arrested. He was informed of the arrest of the David at the police station on 15/05/ 2019 at about 22:00hrs.

He immediately recorded the accused's cautioned statement. The statement was admitted in court as Exh. P1. PW1 submitted that in the course of his investigation he realised there was misunderstanding between David and his wife. David returned his wife to her parents, as the mother-in-law told him to wait for the father-in-law there happened quarrel. The brother-in-law of the deceased went to report to the police while on the way the deceased was struck by accused person.

When cross-examined by the defence counsel Ms. Neema he replied that he never went to the scene of crime. His fellow police officer visited the area of scene. The deceased was with one Aidan when came to the police station. PW1 stated that the victim was serious beaten though he was able to offer his statement.

PW2, Pendo Albert Simwanza, peasant, resident of Kasisiswe village Sumbawanga Municipality testified that on 14/05/2019 when she was at Majengo to her mother-in-law there happened a dispute between her and David, thus she had to escape to her mother-in-law. Then David

came there and started beating her. Her mother-in-law called tricycle (Bajaji) so that she could go home at Kasisiwe. David used a bicycle tracing her from behind. When she arrived at home David told her mother (his mother-in-law) that he has brought her back. Her mother told him she could not receive her because David took her in the presence of his brother. Her mother picked up a phone and called her brothers Alex Simwanza and Aidan Simwanza. By then it was about 07.00pm when her brothers arrived, David was outside the gate. They called him inside. Having entered David picked a knife wanting to stab her mother who was outside.

Her brothers took a knife and told David to leave. David left leaving them there. Then David came forceful he wanted to enter the house. They did not know what he had. David started damaging two motor cycle which were outside.

While in the house after a long time the neighbours came to open the door as David locked them from outside. She did not see David when destroying motor cycle because she was in the house, but they were told by the neighbours who chased him.

When they got out, they met the front and rear lamp damaged. When they got out David was not seen. There came street (mtaa)

Secretary who told his brothers to report the matter to Police Station. Her brothers Aidan and Alex went to report.

That shortly, she said there came one Fredrick, the person they lived with, as they left with the motor cycle saying to have been invaded. As there were two motorcycles, one was used by Aidan and Alex and the other Fredrick and other guy.

She, with her mother went to the place where they were invaded, not far from home. At the scene they met motorcycle lying clown while her brothers were stood aside while their conditions were not good.

The deceased failed to speak he just hug her and sighed her mother without saying. Then her mother fell down and lost conscious. She took her mother home and left Aidan planning to take Alex to the hospital.

On 05/05/2019 they were informed through her mother's phone that Alex has passed away. She did not know who invaded her brothers because she was not there.

When cross-examined by defence counsel, Ms. Neema PW2 said David is her husband and she was married in 2017. They had quarrels in their marriage. Now she is living at Kasisiwe village, before she was living at Makazi Mapya. She did not know which way David used because there are several shorts cut from Kasisiwe to Majengo.

She offered her statement at the police station. What she remembered, was that she arrived at home at about 07.00hours. She did not know how long did it take for Aida and Alex to arrive at home having been phoned. David did not listen anybody. When all the event took place, they were outside.

PW2 told the court that the rear and front lamp and carrier of the motorcycle were damaged. It was those motor cycles which were used as means of transport for going to report to the police. She did not know if all of them were attacked. She did not know the distance from home to the place they were attacked. Alex did not name the person who attacked him to them, while at the scene. Both motor cycles were lying down.

When re-examined by prosecution counsel Ms. Maguta PW2 stated that it was the neighbours who told us that it was David who damaged the motor cycle. She did not remember the people who were at the scene.

PW3, Aidan Albert Simwanza, resident of Kasisiwe village, journalist testified that on 14/05/2019 in the evening he was at his home. While at home he was phoned by his young brother Alex Albert Simwanza telling him to go home there was a problem. He took the motor cycle which Alex's rider was using, he went to Kasisiwe. At home

he met his brother-in-law David outside. At home he met also his mother, Pendo, Fredrick Alex, he also was with the rider of Alex.

At home his mother told him that David had attacked her as she tried to settle the conflict between Pendo and David. By then Pendo was present. They were in the fence at home David was outside the fence. Then, David entered inside, and he was denying what his mother was narrating. Then, there happened throwing of the words (Mabishano) then flacacy occurred. Then David wanted to attack his mother. Him, Alex and Fredrick intended to settle it. PW3 said what made Pendo to go home was the conflict with his husband.

There happened flacacy between them and David. They managed to apprehend him; they took out the knife which he picked. They took David outside the fence. They then got in, sometime later they heard the gate being banged and David started throwing stones. They entered the house. They all entered in one room, but their mother entered in another room David locked the door from outside. He went on throwing the stones.

The neighbour heard the noise but they did not know what the neighbour did to David when the situation was calm. The neighbours opened the door for them. When they got out, they met the motor cycle damaged, site mirrors and fuel pipes were damaged.



The neighbours said they heard David saying he wanted to burn the motor cycle, they controlled him it was when they came to open the door. After the struggle/flagacy there came Mtaa leader who advised them to report the matter to the police station.

They took the motor cycle and went to report to Sumbawanga Police Station. The rider repaired the motor cycles Alex carried him and Fredrick was with the rider of the motor cycle belonged to Alex.

While on the way David was hidden in the sisal along the road, he attacked them and beaten Alex with strong thing they fell down and the motor cycle which was knocked. He identified David due to the motor cycle light also there was moonlight. They shouted for help but David kept on attacking them, he also was beaten by heavy thing at his left hand. He rushed to the neighbour house he awoken him, when they arrived at the scene he met others like Pendo, his mother and others. The event happened at about 21.00hrs David was beaten on the head and he was complaining naming David.

He took Alex to the police station to take PF3 and then to the hospital. They arrived at the police station at about 22.00hrs when they left the scene, he did not know where David went. At the police station they gave statement on happened to Alex, also he gave his statement. They were given PF3 for treatment and RB. They went to Kristo Mfalme



hospital where Alex got treatment. He left Alex at the hospital getting treatment he went back home. Alex died the next date on 15/5/2019. They got informed in the morning. They informed their relatives including his father who was at Malawi.

When cross-examined by Ms. Neema Charles Defence Counsel PW3 said it was the deceased who phoned him at about quarter to 20:00hrs. When Alex phoned to him, he was at home. He arrived at Kasisiswe at about 20.00hours. When the flacacy happened (ugomvi) they were outside the fence. When the mother said David attacked her David denied then quarrel arose between them and David.

No neighbours witnessed; they saw David throwing stones through the window. It was at about 21.00hours the gate, window and door were damaged by stones. He identified David by aid of the light of the lamp of the motor cycle and moonlight. The sisal was tall (grown up). The sisal was at the right side if coming from home direction. Alex was hitted by heavy instrument, he was also hitted with it though I did not saw, it was like an axe handle etc.

The deceased was talking with difficulties and he was feeling severe head pain. The police took 30-45 minutes to record his statement. He was not allowed by the medical doctor to remain at the hospital. It was his friend who went to the hospital in the morning on

15/05/2019 told me Alex has died. He is called Elly Boniface. He did not tell him the time Alex died it was at 07.00 when it was his friend who went to the hospital in the morning on 15/05/2011. He could not go the hospital as he was feeling pain.

When re-examined by Mr. John kabengula PW3 said he saw David by light of the motor cycle and moonlight. He attacked Alex from front side. He did not get home as a did not know where David has headed/gone that is why he went to the neighbour; the home was close. Most of the neighbours were left at home discussing with the Mtaa leader.

PW4, David Simwanza testified that on 15/05/2019 in the morning he was at Matai. He got informed of the death of Alex Simwanza. It was Aidan who informed him. He prepared himself to come to Sumbawanga. He arrived at Sumbawanga in the morning at 10.00am.

At about 21.00 hours they went to look for the accused David Silwela. They arrested him knowing that he is responsible for the death, because he was the cause of fight (ugomvi). David (accused) was/his in law because he had married the daughter of his brother.

On the same date at night hours, they arrested him at Makazi Mapya and sent him at Sumbawanga police station at about 22:00hrs.

When cross-examined by Ms. Neema Charles – Defence Counsel PW4 replied that the cause of death is the quarrel (ugomvi) between the deceased and his brother-in-law. He was not told the source of the conflict (ugomvi).

When re-examined by Ms. Maguta PW4 stated that he was involved in arresting David only.

PW5, Issak Moveni Mwakasege, a cell leader testified that on 14/05/2019 during evening hours he was coming from Mbeya to Sumbawanga. While on the way he was phoned by Mtaa secretary one Alex Masumbulio, telling him that at the home of Simwanza there is a conflict/quarrel (ugomvi) between David (accused) and his brothers in law Alex and Aidan. He instructed his secretary to report to the police station. But after 20 minutes he was told that when Alex and Aidan were going to report were attacked and fell down on the motor cycle.

In the morning on 15/05/2019 he was told Alex has died/passed away. He reported to the police on the death.

When cross-examined by Ms. Neema Charles PW5 replied that he has been a chairman of Kasisiwe for five years. He had not received any complain on the conflict between David and Alex. He received information on the conflict (ugomvi) at about 20.00hours.

PW6, E. 1357 Detective Sargent Omary, Police Officer, testified that on 16/05/2019 he was at Sumbawanga Police Station was assigned a file for investigation by OC-CID.

He went to the area of scene, as post mortem examination was already done on 15/05/2019, he drew the sketch map and interrogated witnesses including relatives. During interrogation he was told there was fight between the deceased and one David John his sister-in-law.

When cross-examined by Ms. Neema Charles Defence Counsel replied that at the scene there was a sign of fighting, the grasses were lying down. From the home where the deceased was before to the area of scene is almost 50 – 70 paces.

PW7 Emmanuel Mwilonga, Medical Officer, testified that on 16/05/2019, he was at the hospital and was instructed by Medical Officer In-charge to conduct post mortem examination of a dead body of one Alex Simwanza.

He investigated the body by looking it from the toes to the head. He found the fracture of the skull at the right side and intracranial bleeding. The cause of the death is due to fracture of the skull which led to internal bleeding into the brain.

The post mortem examination report was admitted as exhibit "P2".

When cross-examined by Ms. Neema Charles Defence Counsel he replied that he has five years experience in his work. On 16/05/2019 he was assigned to examine the body of Alex Simwanza. He also forgotten the names of the relatives who were present. The cause of death was intracranial haemorrhage.

When re-examined by Ms. Maguta State Attorney PW7 stated that his role was to examine the body.

The court having found that, the prosecution has sufficiently established a case against accused person to require him to make his defence, the accused person was called to defend himself and elected to testify under oath. He testified as DW1. He neither called witness to testify in his favour nor tendered exhibit. The summary of his defence story is as hereunder;

DW1, David John Silwela, resident of Makazi Mapya testified that on 14/05/2019 he was at Majengo at the home of his mother. It was at about 07.pm. At that time while at his mother's home there came his wife carrying bad, buckets and mattress. He asked where she was going, she said she knows herself as to where she was going. His mother told her to remain there but she denied. She boarded tricycle "Bajaji" he then traced her from behind to know where she was going.

He was on bicycle. Her parents are living at Kasisiwe. From Majengo to Kasisiwe he spent one and half hours.

At home of his mother-in-law, he met Pendo, Fred Subira and his mother-in-law. Having arrived there, he started talking with his mother-in-law and at the sometimes Pendo started throwing abusive language to him. By then he was out his mother-in-law told me to enter in the gate so that they may discuss but Pendo was still abusing him. Her mother said she could not receive her. She called Aidan and Alex the brothers of his wife.

Alex and Aidan having arrived they asked him why pendo has left, he told them she wanted to go to the place unknown to him. He then decided to bring her back home. By all the time he said Pendo was insulting him. Alex and Aidan started beating him, saying why he has beaten their sister and why he was sending her back home. He opened the get and got out. DW1 stated It was Aidan, Alex, Subira, Fred and Pendo who was beating him.

Thereafter, he opened the gate, he left to his home at Makazi Mpya. He arrived at Makazi Mapya at about 22.00 hours. He used almost one hour. He was arrested on 15/05/2019 at about 21.00 hours. Upon his arrest he was sent to police station at Sumbawanga.

DW1 said he was not involved in killing Alex.

When cross-examined by Ms. Magutta – State Attorney DW1 replied that he had conflict with his wife Pendo and not Pendo's brothers, Alex and Aidan. DW1 admitted to have recorded cautioned statement. The statement was the one tendered in court.

DW1 said Pendo was his wife. They contracted their marriage at Neema Church here at Sumbawanga. All these three years their marriage had conflict. Whenever conflicts happened, they involved parents to settle, also involved Church leaders. He did not find it important to call the Church leader or parents to testify on it.

When defence case was closed, both the state attorney and the learned advocate for republic and accused person respectively were given audience to address the court on final submissions. They all opted not to file. They left the matter to the court. I summed up to court assessors who thereafter gave their respective opinions.

As hinted above, the issues to be resolved before this court are as follows; first, whether or not the accused person did cause the death of Alex Simwanza; if the first issue is answered in the affirmative, the second issue to be resolved is whether he did so with, malice aforethought. Along with answering the above two issues, the other legal issue needs to be considered and determined in the present case is the issue of visual identification.



In criminal litigations, the prosecution is duty bound to prove any case beyond reasonable doubt, as it was held in the case of **John Makolobela, Kulwa Makolobela and Eric Juma @ Tanganyika versus Republic** [2002] TLR 296, by the Court of Appeal that;

*"A person is found guilty and convicted of a criminal offence because of the strength of the prosecution evidence against him which establishes his guilty beyond reasonable doubt"*

In murder cases, akin to this one, the available evidence must prove not only the death but the link between the said death and the accused, that is to say it should be established that the accused is the one who caused that death; the onus never shift away from the prosecution and no duty is cast on the accused person to establish his innocence.

In the instant case, it is not in dispute that Alex Simwanza is dead as per exhibit P1 post mortem examination report tendered by PW7 Mwilonga. The cause of death is a result of fracture of the skull which led to internal bleeding into the brain.

The other issue to consider is who caused the assault led to his death.

According to the totality of the prosecution's testimony, is that incident took place during night hours around 20:00hrs, therefore the

issue of identification is crucial here to resolve. It is a trite law that identification of accused person is necessary where the offence was committed at night. The law also requires that identification evidence must be watertight to ground conviction; that is an identifying witness must give a detailed explanation as to how he identified the accused person. In the case of **Republic versus Elia Sebwato** [1960] EA 174, the Court held that,

*"Identification evidence must be watertight in order to sustain conviction and excludes possibilities of mistaken identity."*

In this case, there is one witness PW3 Aidan Simwanza who testified to have identified the assailant when attacking David and him. The question is whether the circumstances surrounding the scene of crime was favourable for the witness PW3 to identify the assailant without mistake. That is to say the evidence of identification at the area of scene be watertight so as to eliminate any possibility of mistaken identity. The Court of Appeal case of **Said Chally Scania versus Republic**, Criminal Appeal No. 69 of 2005 (CAT) unreported was very clear as regards to the testimony of a person testifying about identifying another person in unfavourable circumstances. The Court ruled that;

*"Where a witness is testifying about identifying another person in unfavourable circumstances, like during the night he must give clear evidence which leaves no doubt that the identification is correct and reliable.... He must also mention all aids to unmistakable identification like the source of light and its intensity."*

Going through the evidence on record, PW3 Aidan Simwanza, accused's brother-in-law was clear when testifying in examination in chief and as well in cross examination. PW3 stated that while they were on the way to report the incident to Sumbawanga Police Station and he being carried by deceased on the motor cycle, were attacked on the front side. PW3 said he saw David who was hidden in the sisal plants along the road attacked them on front side. David hit Alex with strong object and they all fell down. PW3 stated that he identified David by aid of light of lamp of the motorcycle, also he said there was a moonlight.

It is my strong view that, the condition at the scene of crime had been favourable to the identification of the assailant. The fact that the assailant was in-front of them and there was a light of a motorcycle illuminating front side assisted by the light of a moon at around 21:00hrs, it is without doubt that David (accused) was clearly seen and identified by PW3. PW3 told the court that the accused started attacking

them from the front side. Also, that the distance where the accused was and until he ultimately came to attack Alex using a blunt object to my view was very close, he was attacking while holding that object as he did not attack by throwing the object from far. Thus, I may say the issue of light and identification is resolved. PW3 explained further that after the attacking he heard the deceased complaining while naming David, the accused. That means the deceased saw the accused. That corroborates the evidence of PW3.

Therefore, I have no doubt in my mind that visual identification was favourable and water tight in the circumstances of this case to eliminate all possibilities of mistaken identity. Thus, it is my holding that the issue framed herein above is in the affirmative that the accused person herein is responsible for the death of the deceased. The attacking executed to the deceased led to his untimely death on 15/05/2019.

The evidence on record depicts the circumstances leading to the deceased's death that it started with a quarrel between the accused and his wife who was also the second prosecution witness PW2 one Pendo Simwanza.

PW2 testified that on 14/05/2019 while at Majengo at her mother-in-law there raised a dispute between her and David (the accused). She

further testified that David came there and started beating her. Her mother-in-law called tricycle (bajaji) and she went escaping to Kasisiwe area. David also was tracing her from behind using bicycle. The conflict and quarrel culminated into fully-fledged fight joined by Alex Simwanza (the deceased) and Aidan Simwanza (PW3) who are his brothers, also brothers in law of David. Alex and Aidan were called by the accused mother-in-law to settle the dispute.

PW2 further testified that after the stiff conflict there at home and while on the way to report the incident Aidan and Alex were invaded. She said Alex was hit by blunt object on the head leading to his death the following day on 15/05/ 2019.

PW1 a Police Officer who recorded accused's cautioned statement stated that upon his investigation he came to discover that there was a conflict between David and his wife, the conflict culminated by joining accused's brothers in law resulting into fighting.

Additionally, to his testimony above, PW3 Aidan Simwanza also stated to the court that the quarrel between David and PW2 later joined him and Alex (the deceased) in their effort of trying to settle the dispute at Kasisiwe area. The accused even thrown stones and damaged properties.

PW5 also confirmed to the court that there was a conflict between David and his brothers in law one Alex and Aidan. He was informed by his fellow street leader through phone.

In this case at hand, it is very clear that the accused person had conflict, quarrel and fight with his wife and his brothers in law Alex and Aidan, however unfortunately such quarrel led to the death of Alex Simwanza. Under the above circumstances it shows that the accused person had no malice. Thus, the evidence established the offence of manslaughter and not murder.

It has been held in various Court decisions that where it is proved that the death resulted from fight or quarrel the court should consider opting for an offence of manslaughter instead of murder. See cases of **Emmanuel Mrefu @ Bilinje versus Republic**, Criminal Appeal No. 271 of 2006 unreported, **Mashaka Mbezi versus Republic**, Criminal Appeal No. 162 of 2017 unreported, **Republic versus Cheka Antony** [1985] T.L.R 75, **Jackson Mwakatoka & 2 Others versus Republic** [1990] T.L.R 17, **Moses Mungasian Laizer @ Chichi versus Republic** [1994] T.L.R 222.

In the case of Mungasian above, it was held that;

*(ii) where death occurs as a result of a fight an accused person should be found guilty of the lesser offence of manslaughter and not murder."*

See also the case **Republic versus John Wimaana A** [1968] H.C.D 49 in which it was held that: -

*"When death occurs as a result of a fight as in this case, unless there are exceptional circumstances, persons who cause death are guilty of manslaughter and not murder."*

Therefore, as the evidence suggests above the deceased's death resulted from a conflict culminated into a fighting, thus it cannot be said that the accused formed an intention to kill as there was no (premeditation to kill) malice afore thought on the part of the accused.

Looking at the defence story, DW1 denied to have involved in killing the deceased, however admitted to have a conflict with his wife at the material date of 14/05/2019. DW1 further stated that his brothers in law Alex and Aidan did beat him complaining that he has beaten their sister. That suggests there was a conflict between the accused person, his wife and later his brothers in law.

Again, in the cautioned statement (exhibit PI) tendered by PW1 which the accused person did not deny to have made before a police officer, the accused person admitted that he had a conflict between him,



his wife and his brothers's in law. In his statement DW1 further stated that he invaded his brothers's in law Alex and Aidan who were in a motorcycle and attacked them with a stick.


From the above reasons, I find the prosecution side failed to prove the offence of murder against the accused person in the absence of proving malice aforethought (an intention to kill).

I join hand with lady assessor Edina Kiasile in finding out that the accused person is not guilty of murder but guilty of manslaughter and differ with lady and gentleman assessors Salome Kapele and Jelas Simchindo respectively who opined that the accused person not guilty at all.

The circumstances under which the deceased Alex Simwanza died as discussed above leads to an inference that the accused person David John @ Silwela is guilty of manslaughter under section 195 of Penal Code. I found him guilty of manslaughter under section 195 and convict him of manslaughter accordingly.

It is so ordered.



  
**D. B. NDUNGURU**

**JUDGE**

**31. 12. 2021**

Date - 31.12.2021

Coram - Hon. D. B. Ndunguru - J

For Republic - Mr Peres - State Attorney

For Accused - Ms. Neema Charles d/counsel

Accused - Present

Interpreter Miss Zuhura Jabir, English into Kiswahili and vice versa

Judge's Legal Assistant Mr. Shija Alex Mdadila.

### **ASSESSORS**

1. Salome Kapele
2. Jelas Simchindo
3. Edina Kiasile.

**Mr. Peres - State Attorney:** The case is for judgment we are read

**Ms. Neema Charles Defence Counsel:** I am read.

**Accused Person:** I am read for judgment.

**Court:** Judgment is read today in the presence of Mr. Peres State Attorney for Republic, Ms. Neema Charles defence counsel and the accused.

**Sgd: D.B. Ndunguru**

**Judge**

**31.12.2021**

## **PRE SENTENCE HEARING**

**Mr. Peres – State Attorney:** My lord we don't have previous criminal record of the accused. But the accused has caused death of the person who was depended by the family and the relatives, the Republic prays the accused be sentenced severely according to the law so it be a lesson for him and others of the calibre. That is all.

**Mitigation by Ms. Neema Charles Defence Counsel:** My lord we pray the accused be punished leniently on the following.

That taking into the whole circumstances that the accused was invaded by his brothers in laws who started beating him he did it as a defence.

Secondly, the accused is very young he is 23 years only. Thus he is a national manpower. The accused has stayed in remand prison for 2 years and 7 months.

The accused has nine dependants the first is his child who is 4 years his widow mother and his 7 young brother and sisters. We thus pray the court to be lenient when punishing the accused. I humbly submit.

## **SENTENCE**

During pre – sentencing hearing I had an opportunity to hear the address of counsel on the appropriate sentence to be passed to the accused person.

Section 198 of the Penal Code provides a sentence of life imprisonment as a maximum sentence when the accused is found guilty of the offence of Manslaughter contrary to section 195 of the Code.

Taking into account of the seriousness of the offence I found it be at medium level of seriousness. This is due to the fact that when the accused went to the home of the deceased was not armed with anything. That means he never contemplated before as to what could have happened. The accused had no dangerous weapon/substance. That the blow caused the death after sometimes.

That after having considered further that there is no aggravating factors raised by the prosecution side to enable the court to enhance sentence.

This court has further considered the fact that the accused person is the first offender, he has no any previous criminal record and the fact that the accused has stayed in remand prison for two (2) years and

seven months and again the circumstances surrounding the event is that the accused and the deceased were brother in law and that there arose dispute between them I find it being medium level the court must exercise leniency. I hereby sentence the accused to serve five (5) years imprisonment for offence of Manslaughter Contrary to Section 195 and 198 of the Penal Code Cap 16 RE 2019.

It is so ordered.



  
**D.B. NDUNGURU**

**JUDGE**

**31.12.2021**