

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA DISTRICT REGISTRY**

AT ARUSHA

CRIMINAL SESSION CASE NO. 31 OF 2021

REPUBLIC

VERSUS

FANUEL s/o ELINEEMA @ KIVUYO

PROCEEDINGS

Date: 13/7/2022

Coram: D. C. Kamuzora, J

Ms. Yunice Makala, State Attorney for the Republic

Ms. Anna Ngoty Advocate for the accused person

Accused person(name) Fanuel Elineema Kivuyo is present under custody
and represented by Ms. Anna Ngoty, Advocate

B/C: Mariam Kimomwe

Court: Notice of trial for plea taking and trial of information for manslaughter c/s. 195 and 197 of the Penal Code [Cap 16 RE 2019] was duly served on the accused person who is before this court this 13/07/2022.

Ms. Yunice Makala (SA): The matter was scheduled for plea taking and preliminary hearing, we are ready to proceed.

Ms. Anna Ngoti, Defence Advocate: We are ready to proceed

Court: Information of manslaughter contrary to section 195 and 197 of the Penal Code [Cap 16 RE 2019] is read over and explained to the accused person in Swahili language which he understands and he is asked in terms of section 275 of the CPA to plea thereto.

Accused: Ni kweli nilimuua ila sikukusudia kumuua nilikuwa najitetea (It is true that I killed the deceased but it was not intentional as I was defending myself)

Court: the plea of guilty is entered against the accused person for the offence of manslaughter.

Sgd: D.C. KAMUZORA

JUDGE

13/07/2022

Ms. Yunice Makala (SA): Facts are ready I pray to read facts.

Ms. Anna Ngoti, Defence Advocate: We are ready to proceed.

FACTS OF THE CASE

That, the accused in this case is Fanuel Elineema @ Kivuyo, 40yrs, Maasai, Christian, Peasant and resident of Ngiresi, within Arumeru District in Arusha region.

That the accused is charged for the offence of manslaughter under section 195 and 198 of the Penal Code Cap 16 RE 2019.

That, the incident occurred on 24/12/2020 at Ngiresi area within Arumeru District in Arusha Region.

That, on the date of incident the person by the name Alex Olais was with the accused together with Mandela Simeoni who all militiamen and were conducting patrol at Ngiresi area.

That, while on patrol they reached at Church area and Said Loishike went there and started using abusive language to them and did take a knife and stabbed one of the militiamen and did run away.

That, they decided to look for Said and they went to his home and did find his relative by the name of Frank Loe @ Mollel and asked him about Said but he responded that he did not know where he was.

That, there was misunderstanding between them and they started fighting with Frank Loe who screamed for help and the woman by the name of Nesilieni Edward went there and asked the accused and his fellows to stop beating Frank but they did not stop.

That, Nesilieni did ask for another help and the deceased Jonathan Taritoi @ Mollel went there and asked them to stop beating Frank and the accused did beat the deceased on his left eye causing injury to him.

That, the deceased was sent for treatment at Mount Meru Hospital while being treated at the hospital, he died on 03/01/2021.

That, on 09/01/2021, the postmaster examination was conducted on the deceased's body and it was discovered that the cause of death was severed traumatic brain injury.

That, the report was made to the police station and the accused was arrested and sent to the police station for interrogation.

That, the police officers went to the scene of crime and did draw the sketch map of the scene.

That, after the investigation was complete the accused was brought to court and charged for the offence of manslaughter.

Court: In terms of section 192 (2) of the CPA, the accused person is refreshed on the facts read over by the State Attorney and he is now asked to state the facts which are admitted and the facts not admitted.

Accused: I admit to all facts read to me by the State Attorney as they are correct and true.

Signature by Accused person Fanuel Elirehema @ Kivuyo (signed)

Signature by the defence counsel Ms. Anna Ngoti (signed)

Signature by State Attorney Ms. Yunice Makala (signed)

Court: The accused person has voluntarily admitted to all the facts read over to him which in my considered view they constitute the offence of manslaughter.

Sgd: D.C. KAMUZORA

JUDGE

13/07/2022

COURT FINDINGS

Following the accused plea to the offence of Manslaughter and subsequent admission of the facts of the case, the accused plea is found to be unequivocal. Based on the accused unambiguous plea of guilty, I hereby convict the accused person for the offence of manslaughter contrary to section 195 and 198 of the Penal Code Cap 16 RE 2019.

Sgd: D.C. KAMUZORA

JUDGE

13/07/2022

PREVIOUS CRIMINAL RECORDS

Ms. Yunice Makala: I have no previous criminal records of the accused person. We pray this court to punish the accused in accordance with the law because the accused's conduct resulted into losing life of someone who could be of help to the country. The deceased was depended on by his family, parents and children we thus pray that the sentence be a lesson to others not to take law in their hands. That is all.

MITIGATION

Defence Counsel Ms. Anna Ngoti: We pray for lenience on the accused sentence for the following reasons; First, it is the first offender and he has not disturbed the court as he pleaded guilty to the offence. Second, the accused did not intend to kill the deceased as he was performing his duty to maintain peace because at the area they were conducting the patrol there was prayers and worship and they wanted to maintain peace at that area. Third, the accused was not the source for chaos on the date of incident and after the misunderstanding that was caused by another person the accused was performing his duty to stop the chaos and he was defending himself because the person who caused the chaos was armed. Fourth, the accused had never been the stubborn person and he had never been involved in any fight at anytime and anywhere. And on the

date of incident, he did not intend to cause the death of the deceased. Even after the incident as the accused had no ill motive, he went back to his home until when they were called on 26/12/2020 at the village office to state how the chaos started and Jonathan Teritoi and his fellows were regarded as accused in that matter. Fifth, the accused has a wife and four children together with his parents all depending on him. Sixth, the accused has been in custody for a period of one year and eight months since his arrest.

In considering all those circumstances, we pray this court to reduce sentence against the accused person.

That is all.

SENTENCE

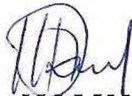
I have considered the submissions by the counsel for both parties on the previous criminal records of the accused. I have also considered mitigating factors as submitted by the defence counsel, the accused instant plea of guilty and the time spent in prison waiting for trial. I also took into consideration the law and sentencing manual which give guidance in relation to sentencing procedures. The accused is the first offender and when the information was read to him, he instantly pleaded guilty before commencement of trial. These are among the factors that this court

considered in sentencing the accused as found in the sentencing manual and different decisions of this court and the Court of Appeal. See the case of **Swalehe Ndugajilungu Vs Republic (2005) TLR 94** and **Lubanga Senga Vs Republic (1992) TLR 358**.

The accused also pleaded guilty to the offence thus, entitled to 1/3 of the actual sentence. He has been in custody for one year and five months from 12th February 2021 to this date 14th July 2022. I have also taken into account the circumstance of the incident which shows that there was chaos on the date of incident which resulted into accused injuring the victim which in fact was not intended to kill him.


In considering the conduct of the accused and mitigation factors, the actual sentence the accused deserve is 5years in prison. Due to the fact that the accused is the first offender and the circumstances reveal that there was a fight and he attacked the deceased in self-defence, I reduce 6 months from the intended sentence. But as he pleaded guilty and served the court's time in dealing with the case, I reduce 1/3 of five (5) years which is one (1) year and six (6) months. I also exclude the period spent in prison which is one (1) year and five (5) months counted from the first date he was aligned before the court, that if from 15/02/2021. That, being the case, the accused is hereby sentenced to

serve one (1) year and three (3) months in prison. The imprisonment sentence commences from today.


D.C. KAMUZORA
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Court: Right to appeal to the Court of Appeal against sentence is fully explained.




D.C. KAMUZORA
JUDGE
13/07/2022

