

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

CRIMINAL SESSION CASE NO. 108 OF 2022

**REPUBLIC
VERSUS
IBRAHIMU SHABAN**

PROCEEDINGS

Date: 13/7/2022

Coram: D. C. Kamuzora, J

Ms. Yunice Makala, State Attorney for the Republic

Ms. Fatuma Amri, Advocate for the accused person

Accused Ibrahimu Shabani is present under custody

B/C: Mariamu Kimomwe

Notice of trial on information for murder c/s 196 of the Penal Code [Cap 16. R.E 2019] was dully served on accused person who is now before this court this 13/7/2022.

Ms. Yunice: The matter was scheduled for plea taking today but the Counsel for the accused has emergency. We pray for another date.

Order: Plea taking on 20/07/2022.

**Sgd: D. C. KAMUZORA
JUDGE**

13/07/2022

Date: 20/7/2022

Coram: D. C. Kamuzora, J

Ms. Lilian Kowero, State Attorney for the Republic

Ms. Fatuma Amri, Advocate for the accused person

Accused Ibrahimu Shabani is present under custody

B/C: Mariamu Kimomwe

Court: Notice of trial for plea taking and trial of information for murder c/s. 196 and 197 of the Penal Code [Cap 16 RE 2019] was duly served on the accused person who is before this court this 20/07/2022.

Sgd: D.C. KAMUZORA

JUDGE

20/07/2022

Ms. Lilian Kowero (SA): The matter was scheduled for plea taking, we are ready to proceed.

Ms. Fatuma Amir: We are ready to proceed.

Court: Information of murder c/s. 196 of the Penal Code [Cap. 16 R.E 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: Nilimuua lakini sio kwa makusudi (It is true that I killed the deceased but it was not intentional)

Court: Enters Plea of Not guilty to the charge/information for murder.

Sgd: D.C. KAMUZORA

JUDGE

20/07/2022

Ms. Fatuma Amir: - We pray that the accused be allowed to plea to the lesser offence of manslaughter and we are ready to proceed.

Ms. Lilian Kowero: - We have no objection to the prayer for plea of lesser offence of manslaughter and we are ready to read the lesser offence of manslaughter C/S. 195 and 198 of the Penal Code as he killed without malice aforethought.

Court: This court cause the information of manslaughter C/S. 195 and 198 of the Penal Code Cap 16 RE 2019 to be read over and explained to the accused person in Swahili language which he understands and the accused is asked to plea to thereto.

Accused: - Ni kweli nilimuua bila kukusudia (It is true I killed him but not intentional).

Court: - The plea of guilty to the offence of manslaughter is entered against the accused person.

Sgd: D.C. KAMUZORA

JUDGE
20/07/2022

Ms. Lilian Kowero: Facts are ready, I pray to read facts as prepared under section 192 CPC Cap. 20 RE 2019.

Ms. Fatuma Amir: We are ready to proceed.

FACTS OF THE CASE

That, the accused person is Ibrahim Shaban, 21 years, Ngoni, Muslim, Student at Arusha Technical College and a resident of Kimandolu area here in Arusha.

That, the accused is charged for the offence of manslaughter contrary to section 195 of the Penal Code Cap. 16 R.E 2019.

That, the incidence occurred on 10/11/2021 at Kijenge area within Arusha district in Arusha Region as the accused murdered Evance Frolian.

That, on the date of incident, the accused was with the deceased at Kijenge area as the deceased went to collect his mobile phone that was being repaired by the accused.

That, the deceased discovered that his mobile was not repaired thus refused to pay repair money to the accused and they started the fight.

That, the accused did take the stick and hit the deceased on the head and the deceased did fall down and he was in bad condition.

That, people who were at the scene did take the deceased to Mount Meru Hospital and it was discovered that he was already dead.

That, on 20/11/2021 the deceased's body was examined and the post-mortem report indicated that the cause of death was traumatic head injury.

That, the report was made to the police station who went at the scene and did draw the sketch map of the scene and the accused was arrested and interrogated and he was later charged for the offence of manslaughter.

If no objection, I pray to tender the post-mortem report as exhibit in this case. That is all.

Ms. Fatuma Amir – No Objection

Court: report on post-mortem examination is admitted and marked as Exhibit PE1.

Sgd: D.C. KAMUZORA

JUDGE

20/07/2022

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

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

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
20/07/2022

Accused person Ibrahim Shaban (signed)

Defence Counsel Ms. Fatuma Amir (signed)

State Attorney Ms. Lilian Kowero (signed)

Sgd: D.C. KAMUZORA
JUDGE
20/07/2022

COURT FINDINGS

Following the accused plea to the offence of Manslaughter and subsequent admission to 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 c/s.195 and 198 of the Penal Code Cap 16 RE 2019.

Sgd: D.C. KAMUZORA

JUDGE

20/07/2022

PREVIOUS CRIMINAL RECORDS

Ms. Lilian Kowero (SA): I have no previous criminal records of the accused person. We pray that the accused be punished in accordance to the law.

MITIGATION

Defence Counsel Ms. Fatuma Amir: as stated by the state attorney, there is no criminal records against the accused person. It is his first offence. The accused had admitted to the offence thus serving courts time and costs. The circumstance of the case was a fight, we thus pray this court to consider that the accused committed the offence out of anger. The circumstances of the case do not show if the accused was drunk or was using drugs forcing him to commit the offence but he seem to be a young man and a student doing legal business for gain. We pray this court to consider those facts in sentencing the accused. The accused is a college student and our country needs experts in technology and he may be dependable in the country. The accused need to start a family as he is still young, grave sentence will cut down his dreams. We pray that he be

leniently sentenced and if possible, he be conditionally released. 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 is considering in sentencing the accused.

I have also taken into account the circumstance of the incident which shows that the accused had a fight with the deceased. The accused is still young and a college student but he took away a life of another young man who was also a student. Like he had dreams he also did shut down the dreams of the deceased who was still young and expecting more in his life. Thus, he cannot be left unpunished.

In considering the conduct of the accused and mitigation factors, the actual sentence the accused deserve is 5years in prison. But as he

pleaded guilty and served the court's time in dealing with the case and the costs, I reduce 1/3 of 5years which is 1year and 6 months. Due to the fact that the accused is the first offender and a college student, I reduce 6 months from the intended sentence. I also exclude the period spent in prison which is 8months counted from the first date he was aligned before the court, that is from 24/12/2021. That, being the case, the accused is hereby sentenced to serve two years in prison. The imprisonment sentence commences from today.

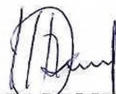
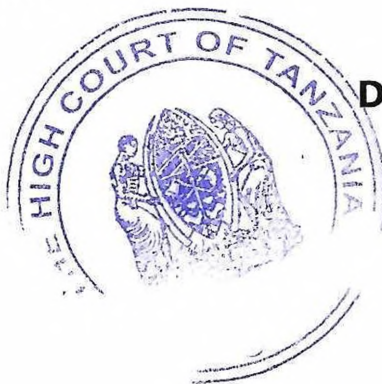


D.C. KAMUZORA

JUDGE

20/07/2022

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



D.C. KAMUZORA

JUDGE

20/07/2022

