

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF MUSOMA)**

AT MUSOMA

ORIGINAL JURISDICTION

CRIMINAL SESSIONS CASE No. 34 OF 2022

REPUBLIC

Versus

MKOMBE CHARLES

JUVENILE COURT

**RULING IN TERMS OF SECTIONS 4 (2), 99 (1) & 119 OF THE LAW OF
THE CHILD ACT [CAP.13 R.E 2019]; RULE 50 (3) (a) OF THE LAW OF
THE CHILD (JUVENILE COURT PROCEDURE) RULES, 2016 GN. NO. 182
OF 2016 AND SECTION 38 OF THE PENAL CODE [CAP. 16. RE: 2019]**

09.08.2022 & 09.8.2022

Mtulya, J.:

Mkombe Mwita (the accused) is a child of seventeen (17) years of age. In November last year, 2021 he was alleged to have killed without malice aforethought a girl-child named Ishime Benita (the deceased) on 24th day of November 2021 at Matongo Village within Butiama District in Mara Region. The offence is enacted under section 195 of the **Penal Code** [Cap. 16 R.E. 2022] (the Code) and its penalty is enacted in section 198 of the Code, which may invite a sentence up to life

imprisonment. The offence was committed when the accused was at the age of sixteen (16) years.

Following his arrest by the police, the accused was arraigned in this court on the 4th day of August 2022 to reply the charge against him, and without any hesitation he admitted the offence and pleaded that it was just unlucky from his side. The material facts produced during the hearing of the case show that on the material day at around 16:00hours the accused and deceased had left their home residence for playing, but in evening hours around 18:00hours, the accused returned at their residence alone without the deceased. Following the missing and noting that the accused was the last person to be seen with the deceased, the community at Matongo Village suspected that the accused may have details of where-about of the deceased.

The villagers then inquired from the deceased who finally admitted to have killed the deceased without malice aforethought and led the community into the place where the deceased was found. The body of the deceased was examined and found that the source of death being strangulations into the neck of the deceased. Following the discovery of the body, the

police sketched the crime scene, arrested the accused and brought him to this court to reply the charge of manslaughter. In order to substantiate its allegations against the accused, the Republic enjoying legal services of Mr. Yesse Temba, learned State Attorney, produced material facts of the case and exhibits Post Mortem Examination Report of the Deceased (PE.1) and Sketch Map of the Crime Scene (PE.2).

During the hearing of the case, the accused admitted the offence and consequently was found guilty and convicted from his own unequivocal plea of guilty of the offence from the facts and exhibits PE.1 and PE.2. During the antecedents from the Republic, Mr. Temba stated that the Republic has no any previous criminal record of the accused person, but this court may consider three (3) factors, *viz.* first, age of the accused; second, Social Inquiry Report (the report); and the Tanzania Sentencing Manual for Judicial Officers, 2019 (the Manual).

On the other hand Mr. Emmanuel Werema, defence counsel thinks that: the accused is a child who admitted the offence hence save time and costs of this court; he was sixteen (16) years of age when committed the offence; no facts to show the

accused used lethal weapon; and the accused, as a child, may be discharged under section 38 of the Code.

This court also constituted with accused's mother, Rhobi Charles, and a Social Welfare Officer, Ms. Devotha Pasky and were all consulted to extract their opinions. According to the accused, he decided to let all to this court. Similarly to his mother who claimed that the accused is a child and admitted the offence hence this court may think an appropriate sentence. Ms. Pasky on her part, through a Social Inquiry Report (Attachment B) on the accused, at page 2 on previous record, he stated that:

Kutokana na taarifa ambazo tumezipata wakati wa kufanya uchunguzi wa kijamiini kwamba mtoto huyu hajawahi kujihusisha na vitendo vyovyote vya uhalifu au uvunjifu wa amani katika mazingira ya nyumbani na kijijini. Aliyekuwa Mwenyekiti na Mtendaji wa Kijiji ameseme kwamba ameishi kijijini hapo kipindi chote akiwa na nidhamu na ushirikiano kwa jamii yake. Kosa hili ni la kwanza lililompelekea kufikishwa mbele ya mahakama.

With regard to Social background Information, the report shows that: *aliacha shule kutokana na changamoto za kifamilia. Akaendelea kukaa nyumbani. Ndipo familia ikamlazimisha kumuoa Bi. Patricia aliyekuwa na umri wa miaka 21 bila ya wazazi kujali na kuzingatia umri wa mtoto....* On possibility to commit any other offence, the report displays that: *nina imani kuwa uwezekano wa mtoto huyu kurudia kosa ni mdogo sana kwa kuwa alifanya kosa hilo pasipo kukusudia.* Finally, the report recommended that:

Mtoto awekwe chini ya uangalizi wa Afisa Ustawi wa Jamii katika kipindi cha muda wa miezi sita ambapo atakuwa akitembelewa mara kwa mara kwa ajili ya kufuatilia mwenendo wake na tabia na kufanyiwa ushauri juu ya namna anavyotakiwa kuishi kwa kuzingatia misingi ya maadili mema katika jamii na hivyo kumfanya mtoto aachane na tabia ambazo zinaweza kumletea madhara makubwa katika maisha yake ya baade.

I have also consulted the Manual cited by Mr. Temba during the antecedents and noted that the juvenile court may discharge

a child convicted of an offence on condition that she remain in good behaviour for not more than three (3) years. On my part, I am quietly aware that section 119 (1) of the **Law of the Child Act** [Cap. 13 RE: 2019] (the Act) prohibits custodial sentences to children who are found guilty of offences, and practice of this court in a bundle of precedents cherishing the provision (see: **Republic v. Johanesh Justinian @ Mujuni**, Criminal Session Case No. 3 of 2020; **Republic v. Sperius Masumbuko & Another**, Criminal Session Case No. 122 of 2020; and **Republic v. Nurat Abdallah @ Kihiri**, Criminal Session Case No. 18 of 2022).

Having said so and considering the provisions in section 4 (2) and 119 (1) & (2) of the Act; Rule 50 (3) (a) of the **Law of Child (Juvenile Court Procedure) Rules**, GN. No.182 of 2016; section 38 of the Code and cited precedents above, I think, this court may not depart from its previous practice unless there are good reasons to do so. In the end, I have decided to commit the accused to his parents.

However, I qualify the placement into her parents by ordering two (2) conditions, namely: first, the placement shall be supervised by the Butiama Social Welfare Officer for a period of one (1) year with monthly reporting at the Social Welfare Officer in the end of

every month; and second, the accused should not commit any criminal offence in a period of two (2) years from the date of this Ruling.

Ordered accordingly.

Right of appeal fully explained and any aggrieved party may wish to prefer an appeal to the Court of Appeal.



F. H. Mtulya,

Judge

09.08.2022

This Ruling was pronounced in camera in the presence of the accused, Mkombe Charles and his her learned counsel Mr. Emmanuel Werema, and in the presence of learned State Attorney, Mr. Yesse Temba and Social Welfare Officer, Ms. Devotha Pasky.



F. H. Mtulya,

Judge

09.08.2022