

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

**AT MUSOMA**

**ORIGINAL JURISDICTION**

**CRIMINAL SESSIONS CASE No. 2 OF 2022**

**REPUBLIC**

*Versus*

**MOSHI JAMUHURI**

**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 & 09.08.2022

**Mtulya, J.:**

A child of fourteen (14) years of age, namely Moshi Jamuhuri (the accused), was brought in this court prosecuted for an offence of manslaughter (the offence) of another child of nine (9) months of age, namely Charity Dotto @ Ganzila (the deceased) contrary to section 195 and 198 of the **Penal Code** [Cap. 16 R.E. 2022] (the Code). The offence is alleged to have occurred on the 23<sup>rd</sup> day of September 2021 at Mshikamano area within the District and Municipality of Musoma in Mara Region, when the accused was at thirteen (13) years of age.

The accused was arraigned in this court on the 3<sup>rd</sup> day of August 2022 to reply the charge against her, and without any hesitation she admitted the offence and pleaded that it was just unfortunate part of her life. The material facts produced during the hearing of the matter show that the accused went at the deceased's residence at Mshikamano where she found the deceased and another child playing on grounds and accidentally hit the deceased with a stone directed at her head to cause bleeding and unconsciousness. The deceased was rushed to Musoma Regional Referral Hospital (the hospital) for treatment and later hours of the same day was pronounced dead. On the same day the deceased's body was examined and the report revealed that the deceased had expired from severe haemorrhage.

To substantiate the material facts, the Republic enjoying legal services of Mr. Yesse Temba, learned State Attorney, produced exhibit P.1 collectively, which contained: Post Mortem Examination Report of the Deceased; Sketch Map of the Scene of the Crime; Cautioned Statement of the deceased; and Extra Judicial Statement of the accused.

During the hearing of the case, the accused admitted the offence and consequently was found guilty and convicted from her own unequivocal plea of guilty of the offence from the facts and exhibit P.1 collectively which were registered by the Republic. 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 page 49 to 50 of the Tanzania Sentencing Manual for Judicial Officers, 2019 (the Manual). Mr. Goodwilly Mweya, learned counsel for the defence was of the view that the accused is a child-student who has been in custody for almost a year without studies hence may be considered for lenient sentence, which will allow her to proceed and enjoy her studies.

This court also constituted accused's father Mr. Jamuhuri Samamba, accused's mother Kabibi Magreth, deceased's father Mr. Dotto Magesa Ganzila and Social Welfare Officer, Ms. Atupele Chilambo. During consideration of appropriate penalty to the accused, they were all consulted and their opinion recorded. According to accused's father and mother, the accused admitted

the offence without any hesitation hence may be considered for a lesser penalty. However, deceased's father decided to let it all to this court. According to him, at family level they have sat and decided to let it to the God, but for the Republic, the law should take its appropriate course.

The social inquiry report prepared by the Social Welfare Officer, Ms. Chilambo, admitted as attachment B in the case, at page 2, with regard to previous record shows that: *mtoto huyu amekuwa na changamoto ndogondogo katika makuzi yake na amekuwa na tabia ya kutoroka shuleni pale anapoadhibiwa kwa kukosea maelekezo anyopewa na walimu wake.* With regard to family matters, the report shows that: *mtoto alizaliwa na Bwana na Bibi Jamuhuri Samamba Magafu na Kabibi Magreth Adam, ambao walitengana takribani miaka kumi iliyopita na mtoto alibaki akilelewa na Bibi mzaa Baba yake aitwae Chahusiku Masegenya mwenye umri wa Miaka 67.*

On the Social Welfare Officer's recommendation, the office thinks that the accused be placed under the care of her parents with supervision and monthly reporting to the Social Welfare officer of the Musoma Municipality in Mara Region and finally the

report recommended that: *litolewe onyo kali kwa mtoto na familia hii ili iweze kuwa fundisho kwa wazazi wanaoshindwa kushiriki ipasavyo katika misingi mizuri ya malezi ya watoto wao.*

I have also consulted the Manual mentioned by Mr. Temba 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 and in addition to that the court may award compensation paid by parents in addition to the punishment.

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 child offenders, and practice of this court in a bundle of precedents is cherishing the enactment (see: **Republic v. Johanes Justinian @ Mujuni**, Criminal Session Case No. 3 of 2020; **Republic vv. 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

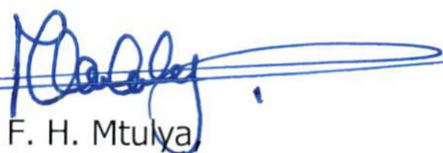
of the Code and cited precedents above, I think, this court may not depart from its previous practice unless there are good reasons to do so.

In the end, I have decided to commit the accused to her parents. However, I qualify the placement into her parents by ordering three (3) conditions, namely: first, the placement shall be supervised by the Musoma Municipal Social Welfare Officer for a period of one year with monthly reporting at the end of every month (1); second, the accused should not commit any criminal offence in a period of two (2) years from the date of this Ruling; and third, accused's parents to pay the deceased's parents a total of Tanzanian Shillings One Million (1,000,000/=) for compensation of loss of the deceased.

Ordered accordingly.

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

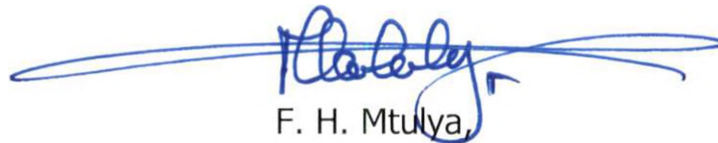


  
F. H. Mtulya

**Judge**

09.08.2022

This ruling was pronounced in camera in the presence of the accused, Moshi Jamuhuri, her learned counsel Mr. Goodwilly Mweya, and in the presence of learned State Attorney, Mr. Yesse Temba and in the presence of accused's mother Kabibi Magreth Adam & accused's grandparent, Chahusiku Masegenya, deceased's father Mr. Dotto Magesa Ganzila and Social Welfare Officer, Ms. Atupele Chilambo



F. H. Mtulya,

**Judge**

09.08.2022