

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**SUMBAWANGA DISTRICT REGISTRY**  
**AT SUMBAWANGA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL SESSION NO. 30 OF 2022**  
**REPUBLIC**  
**VERSUS**  
**GRACE <sup>D</sup>/<sub>o</sub> CHOKARA**  
**JUDGMENT**

Date of Last Order: 06/06/2022

Date of Judgment: 01/08/2022

**NDUNGURU, J**

When the charge was read and explained to the accused, he pleaded guilty thereto. The facts constituting the offence were adduced. That the accused facts were explained to the accused and when given opportunity the accused admitted the facts to be correct. In the circumstances the court finds that the plea offered by the accused is unambiguous and it is unequivocal.

In the premises, I convict the accused person for the offence of Manslaughter as per section 195 of the Penal Code from her own plea of guilty.

**Sgd: D.B. Ndunguru**  
**Judge**  
**01/08/2022**

## **PRE SENTENCE HEARING**

**Ms. Kashindi State Attorney:** My lord we don't have previous Criminal record. But we pray the court to consider the circumstance in which the offence was committed and sentence the accused person accordingly.

**Mr. Chambi defence counsel:** My lord, the accused is charged for Manslaughter she is convicted on her own plea of guilty. The accused has been very cooperative to the investigation organ as well as the court.

My lord, the accused is the first offender, as submitted by the learned State Attorney.

My lord, the accused is the mother blessed with 10 (ten) children. The accused committed the offence as a defence. That she was met preparing food for the children and the deceased very peaceful. The deceased started beating her without any reason, and pushed her down. To defend herself the accused picked a stone and hit the deceased and that was the end of the fight otherwise the deceased would have continued to beat the accused.

That it is the accused who gave the deceased first aid and made arrangement to send the deceased to the hospital. This is a sign of love.

My lord the accused is now taking care of ten children alone. The intention of our punishment is reformative and not otherwise. The time she has stayed in prison is quite enough lesson to her. We pray the circumstance in which the offence was committed be looked at in order to exercise lenient sentence against the accused. That is all.

## SENTENCE

This is the most sensitive part of justice delivery stage. The statutory sentence for the offence of Manslaughter is Life Imprisonment. This is provided under Section 198 of the Penal Code. This is the maximum sentence. The law does not provide minimum sentence thereat. Further there is no any statutory guidance to that effect.

Looking at the wording, the sentence is not coached on mandatory terms, this means the life imprisonment provided is by Penal law is discretionary. But in exercising such discretion the court must act judiciously.

In exercising such discretion, the court must be guided. The guide is contained in the sentencing manual for judicial officers published by the judiciary of Tanzania and CAT court decisions to that effect. I must point out here that, it is the duty of the court to point out and consider the maximum and minimum sentence set by the law. This is because in imposing sentence, the maximum one cannot be exceeded. If the law provides for the minimum sentence than that sentences should be imposed. The maximum sentence should only be imposed when the offence comes close to the worst type. See **Regina V. Mayera (1952) SR 253 and Smith V. Republic (2007) NSWCCA/138.**

In considering the level of seriousness of the offence, I have looked into two factors; the gravity of the offence in which the concern was the nature and circumstances in which the offence was committed, that is the offence was resulted from fight and that the accused was defending herself. See **Xavier Sequeira Vs. Republic Criminal Revision No. 4 of 1992** (Unreported)

I have further looked into the culpability of the offender. In this aspect I have noted that the accused had no any motive for committing the offence. Her conduct before committing the offence was not that she anticipate for anything to happen as she was peaceful at home preparing for dinner. Taking the two into account, my assessment is that the level of seriousness of the offence the accused is facing is low seriousness which attracts the lowest level of sentence within the range. The sentence range in the low level seriousness of the offence is conditional discharge to four (4) years imprisonment.

I have also considered relevant aggravating and mitigating factors which may increase or decrease the sentence within that range as submitted to me by learned State Attorney and defence counsel.

Frankly speaking, there is no any relevant aggravating factor has been brought to my attention. But as far as the mitigating factor, the defence counsel has brought to my attention that the accused is the first offender, she has shown cooperation to the investigation organ and the court by admitting/confessing to have committed offence and plea of guilty respectively. Further that the accused has children who depend on her and the minor role she prayed. All these are relevant factors for consideration.

I have further considered the accused's personal circumstances, that she has provided assistance and cooperation to the authorities after his arrest, the family circumstances of the accused and the likely impact of sentence on ten dependants as submitted by the defence counsel.

Particularly, I have taken into account the accused plea of guilty as merited factor due the fact that it is in the public interest as it has saved the court's time and expenses in conducting full trial. See **Charles**

**Mashimbo Vs. Republic (2005) TLR 90 and Swalehe Ndungajikungu Vs. Republic (2005) TLR 94** at page 98.

I have also taken into account the time she has spent in custody which is almost year

Taken into account all that the accused before me is sentenced to conditional discharged as per Section 38(1) of the Penal Code. The accused is discharged on the condition not to commit any Criminal Offence for a period of Twelve months from today.

It is so ordered.



  
**D.B. NDUNGURU**

**JUDGE**

**01/08/2022**