

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**SUMBAWANGA DISTRICT REGISTRY**  
**AT SUMBAWANGA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL SESSION NO. 38 OF 2022**  
**REPUBLIC**  
**VERSUS**  
**AMBROZ <sup>S</sup>/o ELIAS @ MWANAKATWE**

**JUDGMENT**

Date of Last Order: 03/08/2022

Date of Judgment: 03/08/2022

**NDUNGURU, J**

The accused before this court is facing the offence of Manslaughter Contrary to Section 195 and 198 of the Penal Code. When the charge was read and explained to him, he pleaded guilty thereto. The prosecution adduced facts constituting the offence of Manslaughter. When the facts were read and explained to him and where given opportunity to admit or state anything on the correctness of the facts, he admitted the facts to be correct.

I find the plea of guilty offered by the accused person Unambiguous and unequivocal. I therefore convict the accused person

for the offence of Manslaughter Contrary to Section 195 of the Penal Code.

**Sgd: D.B. Ndunguru**

**Judge**

**03/08/2022**

**PRE SENTENCE HEARING**

**Mr. Kabengula State Attorney:** My lord My lord we don't have previous criminal record of the accused. That the reason for being beaten is failure to go to school and being bed Walter. That the deceased was 6 years old and he was beaten at various parts of the body to me that is the factor which facilitated the bad conditional of the deceased. We pray the accused be sentence as a lesson.

**Mr. Chambi Defence Counsel:** My lord concern with the State Attorney that the accused is the first offender. That alone is a good ground/factor for the court to consider

My lord the offence the accused is facing is Manslaughter saying he punished the deceased by using stick on the event date. My lord the beating done was because of his denial to go to school and being a bed welter (kukojoa kitandani). My lord it is the duty of the parent to make sure the child goes to school because education is the right of the child. Mu lord the weapon used is a stick which is said to have used on different parts of the body. My lord the force used is not to the extent of killing. It was a normal punishment to the child.

The facts show that the day before event the deceased was heard complaining to his matter of stomach ache. The fats does not state if

the mother reported to the accused the sickness of the deceased. Thus the accused give a normal punishment knowing that he was on good health. The accused was then left at his job place telling him to have killed his child

My lord the accused had admitted to be have to caused death by beating him. But the medical report reveals that the cause of death was sickness that was due to persistent abdominal infection with non-traumatic preformation of small intestine. Thus from the medical report the deceased death had nothing related to the beating done by the accused. The fact that the accused was a layman he had to admit to have caused death by beating.

My lord the accused is 29 years old. He is a productive person for the national economy. The accused has a wife and one child all depend on him. The accused has his old widow mother who is also depending on the accused.

My lord the accused is very remorseful to the death of his child because the insistence of going to school was for the benefit of all; the deceased and the accused himself. It is very unfortunate for the death of his son

My lord, the aggravating factor stated by the State Attorney is against the reality. There is nowhere said the accused used excessive force it is rather an assumption. I pray it be ignored. The court should consider the circumstances and the reality of what happened.

My lord the death of the accused son by itself is sufficient lesson. I pray the accused be looked with a merciful eye. We pray for the most lenient sentence to the accused person. That is all.

## **SENTENCE**

The accused has been convicted for the offence of Manslaughter Contrary to Section 195 of the Penal Code (Cap 16 RE 2019). The sentence for the offence is provided Under Section 198 of the Penal Code. The sentence is life imprisonment.

Life imprisonment is the maximum sentence. The law does not provide for the minimum sentence. Further there is no any statutory guidance to that effect.

The facts as adduced is to the effect that the accused being the biological further of the deceased punished the son/deceased as he did not like to go to school. From such a fact it is quite notable that it was a simple punishment to make the child go to school. That being the case find that the level of seriousness of the offence a low level. In this level of seriousness of the offence the appropriate starting point and the sentencing range for this offence is conditional discharge to four (4) years imprisonment.

In considering relevant aggravating and mitigating factors which may increase or decrease sentence within the range, as submitted by the learned counsel of the parties, I am of the considered view mitigating factors have overweighed aggravating factors. That the act done by the accused had no bad notice or revenge, the weapon used was a mere simple stick I have also considered the vulnerability of the

part of the body towards which the stick was directed which is on the buttocks and that the strokes never prolonged I find this is the fit case for the court to reduce the sentence within the range.

I have also considered the accused personal circumstances and other individual relevant factors such that the impact of the sentence upon the dependants, that cooperation shown by the accused to the investigation organs and his plea of guilty before this court which has served time and expenses.

Having considered all that I am of the opinion that the accused deserve lenient sentence.

I hereby sentence the accused by discharged him absolutely as per section 38 of the Penal Code.



**D.B. NDUNGURU**

**JUDGE**

**03/08/2022**