

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
CRIMINAL SESSIONS CASE NO. 10 OF 2022
REPUBLIC**

VERSUS

- 1. SHAZIAN PHILOSY @ OBOTI**
- 2. MBOMA NYALILE MWANGOKA**
- 3. YOTAM SAMWEL @ JAMES**
- 4. KELVIN MAZYO @ JOHN**
- 5. ROZEN IBRAHIM @ MWALILAMBO**

SENTENCE

KARAYEMAHA, J

Now that the accused persons have unequivocally pleaded guilty to the offence of Manslaughter, admitted all facts and finally convicted, the question is to what sentences do they deserve.

It is a common knowledge that the statutory sentence for manslaughter is life imprisonment under section 198 of the Penal Code (Cap 16 R.E 2022) being maximum one.

In this matter it is the prosecution aggravating factors against the mitigation of the accused persons presented by Mr. Alfredy Chapa, learned Counsel. While the prosecution is highly concerned with the conduct of the accused persons of attacking both Lwitiko Edson @ Imma

and Chesco Hassan Gaspar (the deceased) on different parts of the body on the claim that they were cattle thieves and caused their deaths hence craves for the sentence in accordance with the law, Mr. Chapa mitigates that the accused persons are the first offenders, have been behind bars for 1 and 3 months the period which has instilled humane senses in them, have families which depend on them and have promised not to commit crimes whence be good citizens. He, therefore, pleads this Court to pass lenient sentence.

Reviewing the facts of this case which are unequivocally admitted to by the accused persons it is revealed that the accused persons while tracing thieves who stole Venance Melele's cows, without interviewing or apprehending the deceased, they resorted to attacking and beating them on various parts of the body. In the course of assaults, the deceased sustained multiple injuries which resulted into excessive bleeding hence their deaths. In my view the conduct of the accused persons forming a common intention to beat the deceased using weapons they had was unjustifiable.

Taking on board these facts and the mitigation, it is obvious that the accused persons are first offenders, have been behind bars for 1 and 3 months, have repented for the unacceptable conduct and have

families. On looking at them, they are still young and still have some useful life ahead of them while they are free and connecting with their family members and the society. They also need to re-fine their lives that have strayed and lost because of this incident.

This Court has also taken into consideration of their unsolicited plea of guilty to the charged offence, which is a sign of remorsefulness knowing that what they did is unacceptable in the society. The accused persons plea of guilty has shortened the trial, saved Court's precious time and expense that would be incurred by the State.

Staying behind the bar for 1 and 3 months is enough period to instill a sense of humane in them and becoming good examples to people who are unwise in their decision and tend to violate laws of the land. I have also considered the parts of the body attacked including heads which led to severe bleeding.

After assessing facts before me, the mitigation and aggravating factors, it is my view that the level of seriousness of the offence falls in the category of high level because it was motivated by a group and inflicted multiple injuries on the deceased parts of the body. The

sentence ranges from 10 to life imprisonment. I, therefore, hold that the deserving sentence is 10 years.

The unsolicited plea of guilty gives the accused persons credit of $\frac{1}{3}$ of the actual sentence (10 years). As such the Court reduces their sentence from 10 years to 7 years. The accused persons are now sentenced to 7 years imprisonment each.

In the upshot, this Court sentences the accused persons to 7 years imprisonment. It is, however, ordered that time that has been served in Police detention or prison custody for this particular offence shall be automatically deducted from the time the accused persons have been sentenced to serve. I am informed that he has served the period of 1 year and 3 months. This period should be deducted from 7 years of imprisonment by the prison authority.

It is so ordered.



A handwritten signature in black ink, appearing to read "J.M. Karayemaha", is written over a horizontal line.

J. M. Karayemaha
JUDGE
28/07/2022