

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**SUMBAWANGA DISTRICT REGISTRY**  
**AT SUMBAWANGA**  
**CRIMINAL JURISDICTION**

**CRIMINAL SESSION NO 41 OF 2022**

**THE REPUBLIC**

**VERSUS**

**ALISTID S/O KIONGOZI**

**JUDGMENT**

*Date of Last Order: 03/08/2022*

*Date of Judgment: 03/08/2022*

**NDUNGURU, J**

The accused person stand charged with an offence of Manslaughter contrary to section 195 and 198 of the Penal Code (Cap 16 R.E 2019). It is alleged by the prosecution that on 11<sup>th</sup> day of April, 2021 at Mtowisa village within Sumbawanga District in Rukwa Region the accused did cause the death of one CHRISTINA d/o ALISTIDE. When the charge of Manslaughter is read and explained to the accused, he pleaded guilty thereto.

The facts were adduced and the same were explained to the accused who admitted all the facts to be correct. In the circumstance I find the plea offered by the accused is unequivocal. I accordingly convict the accused person for offences of Manslaughter Contrary to section 195 and 198 of the Penal Code Cap 16 R.E 2019.

It is so ordered.

**Sng. D.B. Ndunguru**

**Judge**

**03/08/2022**

**PRE SENTENCE HEARING.**

**Ms. Kashindi S/A:** My lord the deceased death is very unfortunate. We don't have previous criminal record. The deceased was nine (9) months old, the deceased had the right to life. The cause of death as found in the post mortem report shows that the deceased got fracture of the skull. Further the accused ought to foresee that the wife had a child on back and be careful.

I pray the Court to impose severe sentence to the accused because his cruelty has caused the death of the accused.

**Mr. Sanga Defence Counsel:** My Lord the accused person is the first offender that is alone is a factor to be considered. My lord the cause of

death was due to the fight between the accused and his wife in the process of fighting for the welfare of the child who is the deceased.

That the accused has been cooperative to the investigation organs as well as the court by admitting to have caused death of the deceased his beloved daughter. The accused also has lost the daughter in the process of protecting her.

That the accused has remained in remand prison for one year and four months that alone is sufficient for him learn.

My lord the accused never prepared himself to commit such an offence nor used any weapon. We pray for the lenient of the Court when punishing him. That is all.

### **SENTENCE**

The accused person is convicted of charge of Manslaughter contrary to section 195 and 198 of the Penal Code (Cap 16 R.E 2019). The statutory sentence for the offence of Manslaughter is provided under section 198 of the Code. That is life imprisonment. This is the maximum sentence. The law does not provide for the minimum sentence. Further, there is no statutory guide to that.

Looking at the wording of the statute, the sentence is not mandatory but discretionary. But in exercising such discretionary. But in exercising

such discretion the court must act judiciously. In exercising the discretion the court must be guided to avoid abuse of judicial discretion, disparities in sentencing and arbitrariness. The guide is contained in Sentencing Manual for Judicial Officers published by the Judiciary of Tanzania and CAT decisions. I must point out that, it is the duty of the court to point out and consider the maximum and minimum sentence set by law. This is because in imposing sentence it should not exceed the maximum one. If the law provides for minimum sentence it is that sentence which is to be imposed. The maximum one should only imposed when the offence comes close to worst type. See **Regina Vs. Mayera (1952) SR 253** and **smith Vs. Republic (2007) NSWCC A/138**.

In the sentencing process the level of seriousness of the offence must be considered. In this aspect I have considered the gravity of the offence, in which my concern was the nature and circumstances in which the offence was committed, that is a fight between the accused and his wife but unfortunately the blow reached the deceased who was carried. I have also considered the culpability of the offender, that he had no any motive of committing such an offence. Taking all that into account to me it is a low level seriousness of the offence. That level attracts lowest level of sentence. The sentence range in that level is four (4) years imprisonment to conditional discharge.

I have also considered relevant aggravating and mitigating factors which may assist in increasing or decreasing sentence within the range as submitted by the counsel. To my opinion mitigating factors have outweighed aggravating ones.

I have also considered the accused's personal circumstances that he has provided cooperation to the authorities after his arrest, the family circumstances of the accused and the likely impact of the sentence on the dependants and his plea of guilty.

I have also considered the time he has spent in remand custody.

Taken all that into account, I am of the view that this is a fit case for the court to exercise leniency.

I hereby sentence the accused to conditional discharge for the offence of Manslaughter contrary to section 38 of the Penal Code. The accused is discharged on the condition that he has not to commit any criminal offence for a period of 12 months.

It is so ordered.



  
**D.B. NDUNGURU**

**JUDGE**

**03/08/2022**