

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**SUMBAWANGA DISTRICT REGISTRY**

**SITTING AT MPANDA**

**CRIMINAL JURISDICTION**

**CRIMINAL SESSION NO. 06 OF 2022**

**REPUBLIC**

**VERSUS**

**SHIJA S/O LULEMBELA**

**JUDGMENT**

*Date of Last Order: 12/08/2022*

*Date of Judgment: 12/08/2022*

**NDUNGURU, J**

The accused person stand charged with an offence of Manslaughter contrary to section 195(1) and 198 of the Penal Code (Cap 16 R.E 2019). It is alleged by the prosecution that on 04<sup>th</sup> day of October, 2021 at Nsenkwa village within Mlele District in Katavi Region, the accused unlawfully caused the death of one KESSY S/O MSUKA.

When the charge of Manslaughter was read and explained to the accused, and when required to plea thereto, he pleaded guilty. As the facts

were read to the accused he admitted all the facts and added that even when interrogated at police station he admitted.

In the premises, I find the accused guilty. I hereby convict the accused person for the offence of Manslaughter contrary to section 195 of the Penal Code (Cap 16 RE 2019)

**Sgd: D.B. Ndunguru**

**Judge**

**12/08/2022**

**PRE SENTENCE HEARING**

**Mr. Lugano Mwashubila – State Attorney:** My lord we don't have previous criminal record but the accused be severely punished due to the following reasons.

That the accused has caused death of the person something which is contrary to the constituting. Further the deceased has left dependants who depended on him. The nation has lost the manpower.

That the accused beat the on head knowing it to be a sensitive part of the body. That the accused never offered any assistance to the deceased. In such circumstances we pray the accused be severely punished.

That is all.

**Ms. Sekela Amulike – Defence Counsel:** My lord we pray for the lenient sentence due to the following reasons.

That the accused is the first offender. Further the death is resulted from quarrel/fighting between the two. Even the weapon used is a mare stick not leather weapon.

The accused is still young, he is a peasant. The accused has four wives with 15 children. The accused also has pleaded guilty. He has 10 months in prison, he has remorse enough.

In the circumstances we pray for the lenient sentence.

That is all.

### **SENTENCE**

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

Looking at the wording of the provision (section 198) the sentence is not mandatory but discretionary. But in exercising such a discretion the court must act judiciously. 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.

In exercising the discretion, it is the duty of the court to find out and consider the maximum and minimum sentence set by law. This is trite

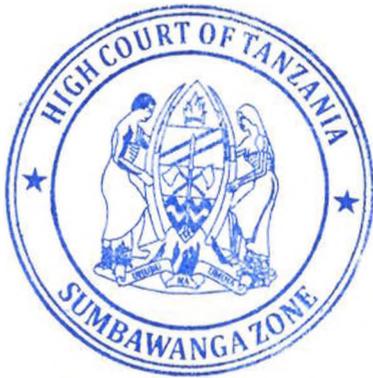
because in imposing sentence it is unlawful to exceed the maximum sentence provided by law. But again the position is that if the law provides for the minimum sentence then it is that sentence which is to be imposed. The maximum should only be imposed when the offence comes close to worst type See **Regina Vs. Mayera (1952) SR 253.**

Having in mind that the sentence is discretionary, the level of seriousness of the offence and its sentence range must be taken into account. In determining the level of seriousness of the offence; I have considered the nature and circumstances in which the offence was committed. The facts reveal that the offence resulted have also taken into account the culpability of the offender; that he had no any motive of committing such an offence. Taking all that to my assessment the offence is seriousness is of low level. The level attracts the lowest level of sentence. The sentence range in this level from four (4) years imprisonment to conditional discharge.

I have also considered the mitigating factors as there was aggravating brought to my attention. Together with mitigating factors brought to my attention, but I consider the act of running away and leaving the deceased lying helpless make me find the accused had the high degree of responsibility for the offence though not pre – meditated.

In the premises, I hereby sentence the accused persons to serve (4) four years imprisonment for the offence of Manslaughter as per section 198 of the Penal Code (Cap 16 R.E 2019).

It is so ordered.



  
**D.B. NDUNGURU**

**JUDGE**

**12/08/2022**