

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

CRIMINAL JURISDICTION

CRIMINAL SESSION NO. 27 OF 2022

REPUBLIC

VERSUS

1ST JILULU S/O SANDU NZEGELE

2ND ZENGO S/O MALELWA

JUDGMENT

Date of Last Order: 01/08/2022

Date of Judgment: 01/08/2022

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 27th day of September, 2021 at Sakalilo village within Sumbawanga District in Rukwa Region the accused unlawfully did cause the death of one SHINJE s/o LIYEMA.

When the charge was read to the accused for the offence of Manslaughter and explained to they all pleaded guilty to the charge.

Following the plea of guilty offered the facts were adduced. The adduced facts were read and explained to the accused persons by the court. When given opportunity to state on the correctness or otherwise of the facts; they admitted the facts to be correct.

I find the accused plea of guilty is unequivocal. I hereby convict the accused person for the offence of Manslaughter Contrary to Section 195 of the Penal Code on their own plea of guilty.

Sgd: D.B. Ndunguru

Judge

01/08/2022

PRE SENTENCE HEARING

Mr. Kabengula – State Attorney: My lord we don't have previous criminal record of the accused. We pray the accused be sentence basing on the circumstances in which the cause of death was just a youth fighting. I pray the sentence be lenient. That is all.

Mr. Lubusi – Advocate: My lord the accused persons are first offenders as submitted by the State Attorney.

The accused persons have pleaded guilty to the court. They have been very cooperative to the investigation organs by admitting the offence.

Their admission had served time and expenses to the court and investigation organs.

The accused are very young persons they are at productive age. They have stayed in remand prison for 11 months. That alone is a lesson to them.

The accused are single parent children. They have mothers who depend on them. I pray the court to exercise leniency to the accused persons. That is all.

SENTENCE

The accused persons 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

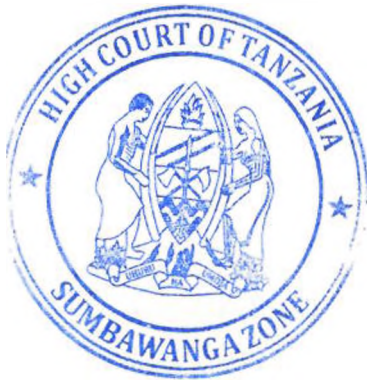
because in imposing sentence it is unlawful to exceed the maximum sentence provided by law. But again the position is that if the law provides for the minimum sentence then it is that sentence which is to be imposed. The maximum should only be imposed when the offence comes close to worst type See **Regina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

01/08/2022