

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
CRIMINAL JURISDICTION
CRIMINAL SESSION NO. 24 OF 2022**

REPUBLIC

VERSUS

GRACE D/O KITAYA

JUDGMENT

Date of Last Order: 02/08/2022

Date of Judgment: 02/08/2022

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 4th day of October, 2021 at Tentula village within Sumbawanga District in Rukwa Region the accused unlawfully did cause the death of one VENERANDA d/o KASIKA.

When the charge was read and explained to the accused in the language she understood (Kiswahili) the accused pleaded guilty to the charge.

Following her plea of guilty offered the facts constituting the offence were read and explained to her, yet the accused agreed/admitted the facts to be correct.

In the circumstance I hold a firm view that the plea of the accused was from her free will. I accordingly convict her for the offence of Manslaughter contrary to section 195 of the Penal Code.

It is so ordered.

PRE SENTENCE HEARING

My lord we don't have previous Criminal record. But we pray in sentencing the accused, the circumstance in which the offence was committed be considered.

Though it was the deceased who followed the accused at home, but she had 48 years old she has left children depended on her. That the accused could have been careful when dealing with the drunkard person. We pray be given sentence as a lesson.

Ms. Neema Charles – Defence Counsel: My lord the accused is the first offender she be considered.

Further the accused has pleaded guilty to the charge. She has been very cooperative since day one when committed the offence. The accused has been telling truth to the investigation organs. My lord looking at the circumstance it is quite clear that the accused was defending herself from the act of the deceased, who followed the accused at home at that very night. She has been imprisonment for nine (9) months.

My lord the accused is 35 years old still young. She has nine children the last one only three months who gave birth while in prison. All the children are depending on her.

I pray for the lenient sentence

SENTENCE

This is the most sentence part criminal cases justice delivery stage. The accused before me is convicted of the offence of Manslaughter contrary to section 195 of the Penal Code. The statutory sentence for the offence is life imprisonment. This is provided for under section 198 of the 198 of the Code. Life imprisonment is the maximum sentence. The law does not provide for the minimum sentence. Yet there is no statutory guidance to that effect.

Though the law does not provide for the minimum sentence but looking at the wording of the provision, the sentence of life imprisonment provided by the Penal law is discretionary not mandatory.

In exercising such discretion the court must be guided. The guide is contained in the Sentencing Manual for Judicial Officers published by the Judiciary of Tanzania and the CAT decisions. I must point out that it is the duty of the court to find out and consider the maximum and minimum sentence set by the law. This is due to the fact that in imposing, sentence should not exceed the maximum provided by the law. It is trite that if the law provides for the minimum sentence, then that sentence should be imposed. The maximum one should only be imposed when the offence comes close to the worst type See **Regina Vs. Mayera (1952) SR 253** and **Smith Vs. Republic (2007) NSWCCA/138**.

I have considered the gravity of the offence and the culpability of the accused person and find that the offence falls into the low level seriousness which attracts the sentence from four (4) years imprisonment to conditional discharge. This is due to the fact that the offence was resulted from fight and the accused was defending herself. See **Xavier Sequeira Vs. Republic**, Criminal Revision No. 4 of 1992 (Unreported)

I have further noted that the accused had no any motive of committing the offence. Her conduct before committing the offence was not that she anticipated anything to happen as she was at home sleeping with her husband.

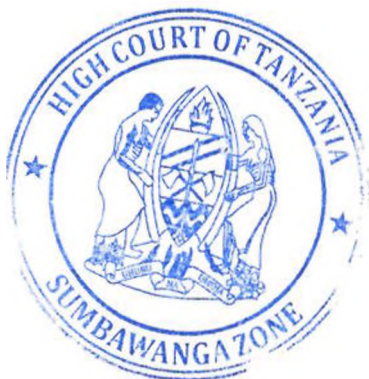
In the process, I have further considered the relevant aggravating and mitigating factors which may assist to increase or decrease the sentence within the range. No aggravating factor has been brought to my attention so to say. There is no tangeable factor has been indicated, as compared to mitigating factors. I have carefully considered the accused personal circumstances, that she has shown cooperation to the investigating organs after the arrest she is the first offender. I have also considered the family circumstances of the accused and the likely impact of sentence on the dependants.

I have further taken into account the accused plea of guilty as a merited factor due to the fact that it is in the public interest as it has saved the court's time and expenses in conducting full trial. See Charles Mashimbo Vs. Republic (2005) TLR

I have also considered the time the accused has spent in remand custody. Taking into account all that I find the accused require courts leniency.

I hereby sentence the accused to conditional discharge as per section 38 of the Penal Code on the condition that the accused should not commit any criminal offence for a period of 12 months from today.

It is so ordered.



D. B. Ndunguru
D.B. NDUNGURU

JUDGE

02/08/2022