

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA DISTRICT REGISTRY

(AT SONGEA)

ORIGINAL JURISDICTION

CRIMINAL SESSIONS CASE NO. 19 OF 2022

THE REPUBLIC

VERSUS

GOTFRID NYONI @ GOTFIELD DISMAS NYONI

RULING ON SENTENCE

Date of Last Order: 24/08/2022

Date of Ruling: 28/09/2022

MLYAMBINA, J.

The Accused Person Gotfrid S/o Nyoni @ Gotfield Dismas Nyoni, aged 45 years, Male, Peasant, Christian, Resident of Kitulo Uzunguni, Songea District was charged with the offence of Manslaughter contrary to *Sections 195 (1) and 198 of the Penal Code [Cap. 16 Revised Edition 2019]*. The Deceased is Mariam D/o Kaunda and before her death she was residing at Ndelenyuma Village Songea District, Ruvuma Region.

The Accused Person was formerly employed by the Deceased as a casual worker engaged in cultivation of the farms of the deceased. The Accused Person and the deceased built a hut in the farms where they lived together in the same roof thus cohabited as concubines.

Out of their joint efforts during their life time in the relationship, they bought farms and planted maize. The dispute over the said farms arose when the deceased wanted to chase and permanently evict the Accused Person from the farms. The deceased invited other casual workers at the farms, the act which annoyed the Accused Person who was not convinced and could not accept.

On 1st day of April, 2021, the rivalries culminated into an exchange of abusive words between the Accused Person and the deceased which amounted to squabble quarrel. One of the neighbour Waziri Gaudensi Ponera was tipped about the incident. He went to the scene and asked the two to calm down. He begged the two to stop quarreling. Thereafter, he left the place believing that the dispute is resolved and settled. Sometimes later, the Accused Person and the deceased resumed the battle of words and the fight.

The Accused Person slapped the deceased on the cheek. The later fell down, thus became nervous. The deceased picked the Machete while approaching the Accused for an attack but the Accused grabbed it. The Accused chased and attacked the deceased while holding a Machete thereby cut her on different parts of her body to death. The Accused disappeared and escaped after the incident leaving the deceased at the scene.

On 02/04/2021 the deceased body was found by Godfrey Peter Tweve lying down beside the road. The Chairperson of Ndelenyuma Village one Stanley Alex Ngairo was phoned and informed about the incident.

Thereafter, the incident was reported at Madaba Police Station and some Police Officers went at the scene of crime as led by Assistant Inspector Mwakatundu. On the material date, the Police Officer G.453 D/C Emmanuel drew a sketch map of the scene. The sketch map of the scene of crime drawn by G. 453 D/C Emmanuel on 02/04/2021 at 1620 hours which was admitted as exhibit P1.

The Autopsy of the deceased body was conducted by Dr. Cheddly Benedict Nungu and according to the Post – Mortem Examination Report, the cause of death was due to Massive bleeding and severe head injury. Postmortem Examination Report of the deceased Mariam Kaunda done on 02/04/2021 was admitted as exhibit P2.

The Accused was traced and arrested on 02/07/2021 by the Militia at Mililayoyo Village Namtumbo District. The Police Officers went to Mililayoyo Village to Pick the Accused and brought him at Songea Police Station.

The Accused was interrogated by a Police Officer WP 7777 D/C Kulwa by way of a cautioned statement and warned up. The cautioned

statement of Gotfrid Nyoni (Accused) recorded by R/WP 7777 D/C Kulwa from 17:50 hours up to 18:20 hours on 02/07/2021 was admitted as exhibit P3.

On 15/07/2021 the Accused recorded an extra judicial statement before the Justice of Peace Honourable Goodluck K. Ndimbo wherein he confessed. The confession statement of the Accused recorded on 15/7/2021 before the Justice of Peace was admitted as exhibit P4.

On 24/08/2022 the Accused upon been arraigned before this Court facing the charges of Manslaughter contrary to *Sections 195 and 198 of the Penal Code [Cap 16 Revised Edition 2019]*, he pleaded guilty and admitted all the facts and the content of the admitted exhibits.

Following the Accused Person's own plea of guilty and admission of the facts laid down by the Prosecution, the facts which established the offence of Manslaughter of one Mariam Kaunda and connected the Accused Person with the same offence, the Court convicted the Accused Person namely Gotfrid Nyoni @ on the offence of Manslaughter contrary to *sections 195 and 198 of the Penal Code [Cap. 16 Revised Edition 2019]*.

Submitting in respect to the sentence, Senior State Attorney Lugano Mwasubira informed the Court that the Republic do not have previous records of the Accused but he prayed this Court to issue severe sentence due to the following reasons: *First*, the Accused cut shortened the life of

the deceased contrary to the Constitution and Laws of the Land. *Second*, the deceased left dependents who are her issues. They depended on her for all their life including advice. *Third*, the deceased was involving herself in the agriculture. She therefore had vital contribution to the agricultural economy of the State. *Fourth*, the weapon used. The Accused used a machete "panga". Bearing in mind that the deceased was a woman, the Accused could have not used such weapon. *Fifth*, the Accused caused great and big injury. He cut her on the head, last finger and the last two fingers on her right hand. The head part is a known sensitive part. The Accused could have taken care. Basing on those reasons and taking consideration that the deceased was in love with the Accused, he should have been most careful. Senior State Attorney Lugano Mwasubira therefore insisted that the Accused Person be given severe sentence as a lesson to him and to the society for those who are likely to do such act.

In Mitigation, Melkion Advocate on behalf of the Accused Person prayed for this Court to issue a lesser sentence due to the following reasons: *First*, it is his first offence as stated by the Republic. *Second*, the act of *plea* has served time and costs for summoning 14 witnesses the Republic had planned to call from various places. *Third*, his *plea* reveals that the Accused is remorseful. The Accused pleaded at Police. The Caution was admitted here. He confessed before Honourable Goodluck K.

Ndimbo Justice of Peace and before this Court. These shows he is remorseful. *Fourth*, a look on how the offence was committed, at large extent it was caused by the deceased. If one reads the Caution and the Confession statements, will discover that the deceased was trying to grab the jointly acquired land. The dispute continued for about four days before the incident. *Fifth*, on the incident day, the deceased was the first person to use the dangerous weapon as against the Accused. *Sixth*, the Accused has been in remand custody for about one year and two months. *Seventh*, the Accused is aged about 46 years. The Nation is depending him on economic activities. *Eight*, the Accused is depended by his family. He has a wife and three issues.

Melkion Advocate therefore prayed for sentence of community service under *section 3(1) of the Community Service Act [Cap 291 Revised Edition 2010]*.

I have given deserving weight to the facts of the case, the aggravating and mitigating factors. I understand, the maximum sentence on the offence of manslaughter is life imprisonment. Thus, life imprisonment is the rule on manslaughter offences and sentence is an exception. It means, life imprisonment must be imposed only if custodial sentence appears to be altogether inadequate punishment having regard

to the surrounding relevant circumstances of the crime. In so doing, there must be a balance between the aggravating and the mitigating factors.

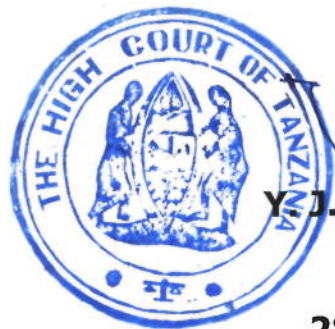
In this case, I agree with Senior State Attorney Lugano that the Court must have regard to the constitutional and legal ethos on value and dignity of life as the Accused cut short the life of the deceased. However, I agree with both parties that the records before the Court speaks without leaving a shadow that the Accused is the first offender. The State has not proved that the Accused does not demonstrate any probability of reformation or rehabilitation. It is the duty of the Republic to demonstrate that there is no probability that the accused can be reformed so that the Court imposes life imprisonment to the Accused Person.

Another consideration of not imposing life imprisonment in this case is that the accused is aged 45 years and that there is no record the accused is a menace to the society. Therefore, committing the Accused Person to life imprisonment would be inflicting severe punishment which is unproportionate to the society gains.

Needless, as alluded by Melkion, Advocate representing the Accused, the records speak that the Accused pleaded at Police, confessed before the Officer of Peace and pleaded before this Court. The conjunctive effects of the Accused post commission of the offence evidences that he is being remorseful.

Though the facts reveal correctly that the Deceased was the first person to use the dangerous weapon as against the Accused, the act of the Accused can not be lightly taken as he is the one who caused death of the deceased person. As stated by Senior State Attorney Lugano, the Accused should have born in mind that the deceased was a woman and refrained from using that weapon. Melkion, Advocate has prayed for community service under *section 3 (1) of the Community Service Act (supra)*. However, the death of the deceased indicated a high culpability by the Accused Person. It was caused by the Accused Person in the course of unlawful act which carried a high risk of death. It follows that sending the Accused Person to jail will make him get reformed than committing him to community service.

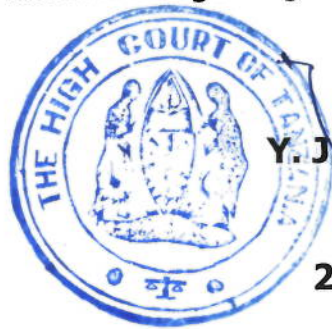
Having considered all the aggravating and mitigating factors in this case, I hereby sentence the Accused Person to seven years imprisonment from the date of this sentence. It is so ordered.



Y.J. MLYAMBINA
JUDGE

28/09/2022

Ruling delivered and dated 28th day of September, 2022 in the presence of Senior State Attorney Tumaini Ngiruka, learned State Attorneys Frank Chonja and Venance Mkonongo for the Republic, the Accused Person and his Counsel Makame Sengo. Right of Appeal fully explained.



Y.J. MLYAMBINA

JUDGE

28/09/2022

A handwritten signature in blue ink, consisting of a series of loops and a final flourish, positioned to the right of the judge's name and date.