

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**SONGEA DISTRICT REGISTRY**

**(AT SONGEA)**

**ORIGINAL JURISDICTION**

**CRIMINAL SESSIONS CASE NO. 26 OF 2022**

**THE REPUBLIC**

**VERSUS**

**MUSSA MOHAMED YAWANI**

**RULING ON SENTENCE**

**Date of Last Order:** 30/08/2022

**Date of Ruling:** 28/09/2022

**MLYAMBINA, J.**

Musa s/o Mohamed Yawani (hereinafter referred to as the Accused Person) is aged 56 years, Male, Peasant, Muslim, Resident Ligoma Village, Tunduru District, Ruvuma Region was charged with the offence of manslaughter contrary to *section 195 (1) and 198 of the Penal Code [Cap 16 Revised Edition 2019]*. The deceased is Raimu s/o Mohamed @ Rashid @ Rahimu Mohamed Rashid who before his death was residing at Ligoma Village.

The brief facts are that; the Accused Person was married to one Ziada D/o Jafari @ Issa thereby celebrated and contracted an Islamic marriage. The marriage between the Accused Person and Ziada D/o Jafari

Issa subsisted for 27 years and was blessed with four issues. The Accused Person and Ziada D/o Jafari @ Issa had a prolonged dispute in their marriage, thus it got broken beyond repair despite of several reconciliation.

On February, 2020 the marriage between the Accused Person and Ziada D/o Jafari @ Issa was dissolved and the divorce was procured according to Islamic rituals. After the dissolution of the marriage one Ziada D/o Jafari @ Issa went to rent another house where she was engaged to the deceased whom they lived under one roof.

On 22<sup>nd</sup> day of May, 2020 the said Ziada D/o Jafari @ Issa was at home preparing the evening meal in the kitchen while the deceased sat on the mat outside the kitchen. The Accused Person arrived and called his ex-wife the said Ziada D/o Jafari @ Issa to come out of the kitchen and receive a phone call from her son at Nachingwea. The Accused Person greeted the deceased but he responded with abusive words. The Accused Person became furious and nervous. The Accused Person beat the deceased with a stick and the deceased attacked him, thus a squabble fight mounted. In the cause of fight and on defence, the Accused Person stabbed the deceased with a knife on the stomach and cut him on the neck to death.

The Accused Person disappeared and escaped after the incident together with the knife. One Ziada D/o Jafari @ Issa screamed for help and one of the neighbours Rashid Mohamed Makota responded and went at the scene.

The incident was reported to the Village Executive Officer (VEO) of Ligoma Village one Jilasi Abdallah Jalasi, thereafter to Tunduru Police Station. On the material date, the Police Officers went at the scene of crime and picked the deceased body to Tunduru District Hospital.

On 23<sup>rd</sup> May, 2020 autopsy of the deceased was conducted by Stephen Alfani @ Hokororo. According to the post mortem examination report, the cause of death was due to Hypovolaemic shock secondary injury to the left jugular vein and oesophagus damage.

On 2<sup>nd</sup> May, 2020, the police officer G.7974 D/C Martine went to the scene of crime and drew a sketch map. On 23<sup>rd</sup> May, 2020 the Accused Person surrendered himself to Juma Yusuf @ Njinga who accompanied him to Tunduru Police Station where he orally confessed that he caused the death of the deceased. where he surrendered himself. The Accused Person handed to the Police Officers the knife which was used to stab the deceased to death.

On the material date, the Accused Person was interrogated by a Police Officer G.3589 D/CPL Mohamed by way of cautioned statement and

warned up. On 26<sup>th</sup> May, 2020 the Accused Person recorded an extra-judicial statement before the Justice of Peace Hon Salome D/o Faustine @ Mdesa and confessed.

Upon the Accused Person being arraigned before this Court with the counts of manslaughter contrary to *section 195(1) and 198 of the Penal Code [Cap 16 Revised Edition 2019]* he pleaded guilty; the postmortem examination report of the deceased one Raimu Mohamed @ Rashid filed on 23/5/2020 was admitted as exhibit P1; the sketch map of the scene of crime of the deceased Raimu Mohamed @ Rashid drawn by G.7974 D/C Martine lead by Jalasi Abdallah Jalasi on 23/5/2020 was admitted as exhibit P2; the caution statement of the Accused Musa Mohamed recorded by G.3589 D/C Mohamed on 23/5/2020 from 07:21hrs up to 09:47hrs was admitted as exhibit P3; the extra judicial statement of the Accused Person Musa Mohamed recorded before Hon. S.F. Mdesa Officer of Peace on 26/5/2020 from 10:59 am was admitted as exhibit P4.

On his own free will and volition, the Accused Person, admitted all the above read facts and the contents of the tendered exhibits.

Consequently, upon the Accused Person's own plea of guilty and admission of the facts laid down by the prosecution side, together with the contents of exhibits P1, P2, P3, and P4, the facts which established the offence of manslaughter and connected the Accused Person with the

same offence, the Accused Person one Musa Mohamed @ Yawani was convicted by this Court on the offence of manslaughter contrary *to sections 195 and 198 of the Penal Code [Cap 16 Revised Edition 2019]*.

Following the conviction of the Accused Person, Senior State Attorney Lugano Mwasubira in his sentence submission informed this Court that the State has no previous records of the Accused but he prayed for the court to issue severe sentence due to the following reasons:

*First*, the life of the deceased was cut short. The deceased had the right to live as *per Article 14 of the Constitution of the United Republic of Tanzania, 1977*.

*Second*, the deceased was the breadwinner in his family both for production and taking care of the family. The nation has lost an important person for production and economic growth.

*Third*, the two weapons used by the Accused Person were dangerous. He beat the deceased using the stick & later used a knife while the deceased had no any weapon.

*Fourth*, the Accused Person caused serious injuries to the deceased at sensitive area. The Accused stabbed the deceased with a knife at stomach part which is a dangerous part. He also cut the deceased at the neck on his jagular vein and oesophagus. The injuries caused severe pains to the deceased.

*Fifth*, the Accused after doing such act, ran away. He never assisted the deceased.

*Sixth*, the Accused had no any reason of doing so because they had already separated with his wife. The Accused had already married & the wife was in the process to be married by the deceased.

Senior State Attorney Lugano Mwasubira therefore insisted for a severe sentence so that it can be a lesson to the Accused Person or to people of this kind or to those who plans to commit similar acts.

On his part, Zuberi Maulid, Advocate for the Accused Person, in his mitigation prayed for a lesser sentence based on the following reasons:

*First*, the duration the Accused has spent in remand custody. He has been there since May, 2020 to date. It is almost two years now. Every sentence issued to the Accused must have a purpose. One of the purposes is to reform the Accused. He cited the case **of Bernadeta Paul v. R** (1992) TLR 97. In that case, the Court insisted that, while issuing sentence, the Court should ensure that the sentence is proportional to the offence committed and the purpose should be reforming the Accused. Thus, the two years in Remand Custody is enough time to reform the Accused.

*Second,* the Accused is the first offender. As stated by the Republic. This proves that the Accused was a person with good character.

*Third,* the Accused pleaded guilty. He pleaded ever since he submitted himself before the police. He pleaded guilty before the Officer of Peace and before this Court. This proves that Accused is remorseful to his offence. The Accused had not disturbed the Court.

*Fourth,* the Accused has served costs of not summoning witnesses to prove this case, costs of which would be used in development activities.

*Fifth,* the cooperation of the Accused reveal that the Accused believes in justice to be done.

*Sixth,* the Court has to consider the environment in which the offence was committed. The Accused took a phone call of their issue to his divorced wife. He did not have intention to kill. The incident happened after the deceased was greeted by the Accused but he responded with abusive words. It is provocation which caused the Accused to commit the offence. The Accused was coming from shamba, that is why he carried his knife.

*Seventh,* the offence was committed while fighting. The Accused is Myao by tribe. It would be important probably to call witnesses under *section 320 of the Criminal Procedure Act [Cap 20 Revised Edition 2022]* before sentence. The Accused is depended by the nation and his family.

He is the father of seven issues born by two women. The last issue is aged 10 years.

I have considered and given adequate weight the factor that the Accused Person pleaded guilty to the offence of Manslaughter at all times. It is in record and not controverted that the Accused Person submitted himself before the police and pleaded guilty in his caution statement. He pleaded guilty before the Officer of Peace and before this Court.

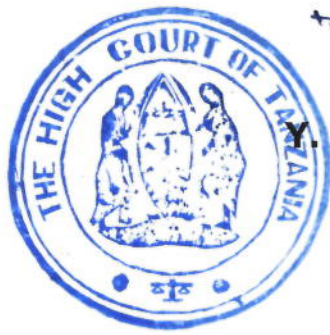
The Court has further considered to what led to the unlawful killing of the deceased person, the manner it happened. It is not disputed that on the day the Accused killed the deceased, the Accused Person went to his ex-wife the said Ziada D/o Jafari @ Issa to facilitate her receive a phone call from her son at Nachingwea. It is also not in dispute that the Accused Person greeted the deceased but the later responded with abusive words, an act which provoked the Accused Person. As a result, the argument generated into a physical fight between the Accused Person and the deceased. Following the fight, the deceased ended up been beaten by the deceased with a stick, stabbed on the stomach by a knife and cut on the neck to death.

The Court is of further consideration that the Accused Person appears to be remorseful and apologetic for the unfortunate turn of events.



Considering the circumstances of the case, though the maximum sentence for Manslaughter is life imprisonment, I however, find that the Accused Person deserves a lesser sentence due to five reasons. *First*, the maximum penalty is normally reserved for the most serious of the situations. *Second*, the circumstances of this case do not follow in the category of most heinous examples of manslaughter. *Third*, the Republic has told the Court that the Accused is the first offender. Therefore, the Accused has the room of further rehabilitation and reforming. As such, the Accused do not deserve a sentence of life imprisonment but needs further custodial sentence for proper reformation and rehabilitation. *Fourth*, the killing occurred in the heat of the moment. The Accused was acting in self defence even though he used dangerous weapons. *Fifth*, the unlawful death was not actuated by malice afore thought.

I would think of calling a full-fledged and bifurcated hearing of witnesses before reaching this sentence under *section 320 of the Criminal Procedure Act (supra)* as suggested by the Zuberi Maulid, Advocate for the Accused. However, I find the mitigating factors outweigh the aggravating circumstances and the need to require presentation of witnesses. I therefore sentence the Accused Person to four years imprisonment from the date of this sentence. It is so ordered.



**Y. J. MLYAMBINA**

**JUDGE**

**28/09/2022**

Ruling delivered and dated 28<sup>th</sup> 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 Zuberi Maulidi. Right of Appeal fully explained.



**Y. J. MLYAMBINA**

**JUDGE**

**28/09/2022**