

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
SONGEA DISTRICT REGISTRY  
(AT SONGEA)  
ORIGINAL JURISDICTION**

**CRIMINAL SESSIONS CASE NO. 03 OF 2022**

**THE REPUBLIC  
VERSUS  
DOTTO CHARLES @ KABIKA**

**RULING ON SENTENCE**

**Date of Last Order:** 25/08/2022

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

**MLYAMBINA, J.**

The Accused Person one Dotto D/o Charles @ Kabika, aged 28 years, female, peasant, pagan, resident of Nkaya Village was charged with two counts of Manslaughter contrary to *Section 195(1) and 198 of the Penal Code [Cap 16 Revised Edition 2019]*. The deceased are Kwimba D/o Masandalala and Mkanda S/o Masandalala who were residing with their parents at Nkaya Village within Nyasa District. The Accused Person is the blood mother of the deceased namely Kwimba D/o Masandalala and Mkanda S/o Masandalala.

The Accused Person was married to one Masandalala S/o Gilala and blessed with three issues including the deceased. On 29<sup>th</sup> November, 2020 the Accused Person, was preparing evening food for her family.

The husband of the Accused Person approached her and uttered words that she had been bewitching him by putting traditional medicines in the food. He further complained that the conduct of the Accused Person affected one of the children namely Unga Masandalala who suffered stomach pains after eating the food contaminated with such medicines. The Accused Person was also abused of bewitching her co-wife one Kulwa D/o Charles by often washing her hands at her door.

The Accused Person became stressful because of the implicated scandal and became ugly. On 1<sup>st</sup> December, 2020 the Accused Person was at home with the children including the deceased. The Accused Person recalled the accusations by her husband that she was involved in witchcraft thus confused. The Accused Person became nervous thereby picked a match box and set fire in the houses situated at their home compound. The Accused Person entered into one of the houses which were on fire in an attempt to kill herself.

The children of the Accused Person namely Kwimba D/o Masandalala followed her in the said house and caught fire. The co-wife of the Accused Person one Mwasi D/o Jilala @ Lung'wecha saw the fire at a distant burning their houses. She went at home and found the Accused Person at the door and the children inside the house which was

on fire. She shouted at her neighbours who responded and came to rescue some of the properties. The Accused Person removed the two children from the house who were already seriously burnt.

The Accused Person was arrested and taken to the office of Nkaya Village, thereafter conveyed to Lituhi Police Post. On the material date, Police Officer F590 D/SSG Shafii went to the scene of crime and drew a sketch map.

The injured children namely Kwimba D/o Masandalala, Mkanda S/o Masandalala and Sambe S/o Masandalala were rushed to Lituhi Hospital for Medical examination, thereafter referred to St. Joseph Mission Hospital for further medical treatment.

The injured one Mkanda S/o Masandalala died while on the way to Hospital whereas Kwimba D/o Masandalala died at the Hospital while undergoing medical treatment.

On 2<sup>nd</sup> December, 2020 the autopsy of the deceased bodies was conducted by Dr. Tupokigwe D/o Brown. According to the Post – mortem examination report, the cause of death of Mkanda S/o Masandalala was due to asphyxia, smoke inhalation and severe burn injury.

According to the Post-mortem examination report, the cause of death of Kwimba D/o Masandalala was due to hypovolemic shock secondary to severe burn injury. On 4<sup>th</sup> December, 2020, the Accused Person recorded an extra judicial statement before the justice of peace Honourable Mbwambo Ngoye John where she made a confession.

When the Accused Person was arraigned before this Court on two counts of Manslaughter contrary to *section 195 (1) and 198 of the Penal Code [Cap 16 Revised Edition 2019]*, he pleaded guilty and admitted all the afore facts.

Upon the Accused Person's own plea of guilty to both counts of Manslaughter and admission of the facts laid down by the prosecution side, plus the facts which established the offence of Manslaughter to her issues Mkanda Masandalala and Kwimba Masandalala and connected the Accused Person with the same offence, the Court convicted the Accused Person Dotto D/o Charles @ Kabika 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 submission regarding sentence informed the Court that the Republic have no previous records of the Accused but he prayed for serious sentence be issued to the Accused due

to the following reasons: *First*, the Accused shortened the life of two innocent issues who had their constitutional right to live. *Second*, the act of the Accused to set fire on three houses was a dangerous act which could bring negative effects including death as no one could know who was inside. *Third*, the dead issues were young who possessed future plans. They would study, have family & later be even future leaders. Their death cut short their plans. *Fourth*, the Accused had time to think ever since they had a dispute with her husband on 29/11/2020 to 1/12/2020 when she committed the offence.

It was further submitted by Senior State Attorney Lugano Mwasubira that the Accused had also time to rescue the deceased after hitting fire. He therefore beseeched this Court to issue severe punishment to the Accused and others who may contemplate to do such offence.

In his mitigation Makame Sengo, Advocate for the Accused submitted that, as per the circumstances leading to the commission of the offence, it is open that the Accused had depression for a long time. She was accused to bewitch the co-wife and the issues of the co-wife.

Also, the act of her husband alleging that she put traditional herbs in the food disturbed her. Both the husband & the co-wife were blaming the Accused Person for bewitching her husband.

It was thus the submission of Makame Sengo that the Accused is a cool person, upon been provoked, she could do anything. The other mitigating factor advanced by Makame Sengo, was that the Accused had stayed in custody for more than one year and nine months. By the time the Accused was arrested, she left an issue Sambe Masandala aged five (5) Months. He is now two years old. He is young requiring custody of this mother & father for his wellbeing. Further, the Accused is very remorseful. Makame Sengo, therefore, prayed for a lesser sentence.

While I take into account that manslaughter involves the highest level of harm, I note that the intention of the Accused Person to enter into one of the houses which were on fire was an attempt to kill herself and not to kill her issues. The offence committed by the Accused was of not timely rescuing her children namely Mkanda Masandalala and Kwimba Masandalala when they followed her in the said house and caught fire.

There is no any justification to the satisfaction of the Court as to why the Accused Person removed the two children from the house after being seriously burnt. This case suggests manslaughter by gross negligence. The Accused breached her duty of care towards her issues which caused death of her deceased issues. The Accused Person's act was bad amounting to a criminal act or omission. It is a well-established legal

principle from the case of **Donoghue v. Stevenson** [1932]AC 582 that a duty of care arises from an act of a person where the requirements of foreseeability, proximity, fairness, justice and reasonableness establish such duty.

Therefore, it is the findings of this Court that the Accused being a parent had a duty of care to her issues to act as reasonable person would do in her position. Failure of the Accused Person to take care her deceased issues amounted into breach of her duty. The objective standard of reasonableness in this case reveals that if the Accused Person was not negligent, the deceased issues would have survived.

It is the further findings of this Court that upon setting fire, entering into the said house and been followed therein by her minor issues, the Accused would have foreseen a serious and obvious risk of death to the issues whom she left therein. Her breach of duty was, in all circumstances, very reprehensible and below standard of a reasonable person. As such, it amounted to a crime.

I find that the mitigating factor that the Accused Person had depression for long time befallen bewitching the co-wife and the issues of the co-wife lacking any validity. Makame Sengo, Advocate cannot be assumed to have medical or psychological expertise. He is not a

competent person to tell the Court with certainty that the Accused Person had depression.

Also, the submission by Makame Sengo that the Accused is a cool person, if provoked, she can do anything lacks any validity. Being a cool person does not justify the Accused Person to act negligently, breach her duty of care to her minor issues, the act or omission which resulted into the death of the issues.

The other mitigating factor that the Accused had stayed in custody for more than one year and nine months is somehow valid since it is a very short time to the extent of not reducing the sentence to large extent. Additionally, there is nothing to prove that the Accused is very remorseful. However, the presence of the two years old issue of the Accused Person requiring custody of her mother & father for his wellbeing is a fundamental reason to be taken into account in reaching this sentence.

Hence, from the conjoint consideration of the facts leading to the commission of the manslaughter offence, the submissions on sentence and the mitigating factors, I find that it would be appropriate to impose a custodial sentence to the Accused Person than committing her to life imprisonment as required by the law. Conclusively, having weighed all the aggravating and mitigating factors in this case, I hereby sentence the



Accused Person Dotto Charles @ Kabika to five 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 Generosa Montano, Frank Chonja and Venance Mkonongo for the Republic, the Accused Person and her Counsel Makame Sengo. Right of Appeal fully explained.



**Y. J. MLYAMBINA**  
**JUDGE**  
**28/09/2022**