

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**(DISTRICT REGISTRY OF MTWARA)**  
**AT MASASI**  
**CRIMINAL SESSION CASE NO 26 OF 2020**  
**REPUBLIC**  
**VERSUS**  
**SWALEHE YOHANA ..... ACCUSED**

**RULING ON SENTENCE**

**Muruke, J**

Swalehe Yohana, of Mkolopora – Masasi, admitted before me, the charge of manslaughter, he committed contrary to section 195 and 198 of the Penal Code Cap 16 R.E 2002, by then. Previously, he was charged for an offence of murder, which he entered plea of not guilty, before offering a plea of lesser offence of manslaughter. Facts constituting the offence and how was committed, to the point of arrest, were read over in Kiswahili language best known to Swalehe Yohana, who admitted all the facts together with exhibits tendered.

Court then, convicted accused on his own plea of guilt for an offence of manslaughter contrary to section 195 and 198 of the Penal Code Cap 16 R.E 2022. Before sentencing prosecution, informed the court that they don't have previous records of conviction. On the other hand, defence counsel, Steven Lekey, requested the court to issue leniency sentence on the following reasons:



In all these we are going to say, let the court sees that, accused be conditionally discharge in terms of section 38 of the Penal Code Cap 16 R.E 2022 on the following grounds: -

- i. As said by the prosecution accused is first offender, court of appeal in the case of John Mbua vs R Criminal Appeal no 257/2006 referred Fauz Twaib book of Criminal procedure in Tanzania a case digest at page 449.
- ii. Apart from being first offender, accused has pleaded guilt to the offence that reduced the costs of trial before the court of financial and time. Thus, case be guided with the case of John Mbua referred earlier.
- iii. Accused is young aged 33 years, he is needed in the construction of his nation.
- iv. He has stayed in remand for 3 years. He was arrested on 10/06/2019, all these time, be taken into consideration while giving sentence, as Court at Appeal said in the case of Agnes Julias vs R, Criminal Appeal number 188/2010 (unreported), failing to account for years spent in prison is to punish the accused person in criminal justice.
- v. Nature of the offence, as also said by prosecution, it was a result of fight between accused and deceased. In the cause of a fight it was eigher, Deceased or Accused. Thus intention of killing was not there.

Having heard mitigation factors by Defence counsel, it is worth nothing that, deceased was a husband of two wives with number of children depending on him.

Deceased aged 40 years when his life cut short, was by then deputy village executive officer of Mkolopora village, it is obvious that the society concerned lost their leader.

From facts admitted by accused, deceased met his death when he was fetching water for his own biological mother, who was taking care of his mother, despite being married to two wives, thus deceased mother lost her lovely son. Accused although admitted the offence, did not show any remorse, as when asked if he has anything to say (loctus by accused) he said nothing. In the end accused cut short deceased life that cannot be returned back.

Having considered mitigation factors by defence counsel, and circumstances of this case I have noted above, I thus, sentenced the accused Swalehe Yohana to five years imprisonment to be a lessons to the society that, do not follow the law.



A handwritten signature in blue ink, appearing to read "Z. G. Muruke".

**Z. G. Muruke**

**Judge**

**03/10/2022**

Ruling delivered in the presence of Nancy Mushumbusi and Meshack Lyabonga State Attorney for the prosecution and Steven Lekey counsel for the accused.



A handwritten signature in blue ink, appearing to read "Z. G. Muruke".

**Z. G. Muruke**

**Judge**

**03/10/2022**