

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
SITTING AT MPANDA
CRIMINAL JURISDICTION
CRIMINAL SESSION NO. 53 OF 2022

THE REPUBLIC

VERSUS

OMARY S/O JUMA @ HASSAN

JUDGMENT

Date of Last Order: 05/10/2022

Date of Judgment: 05/10/2022

NDUNGURU, J

That the accused person was charged with the offence of murder contrary to section 196 and 197 of the Penal Code. When the charge was read and explained to him, and when required to plead thereto, the accused pleaded not guilty.

Following the prayer of the counsel for the accused that the accused is red to plea on the lesser offence of Manslaughter the prosecution substituted the charge from Murder to Manslaughter. When

the charge for manslaughter contrary to section 195 and 198 was read and explained to the accused, he pleaded guilty.

Following the plea of guilty the facts constituting the offence of Manslaughter was read and explained to him. The accused admitted the facts to be correct and briefly narrated what happened.

Taking into account all that I find the accused plea of guilty is unequivocal. I accordingly convict the accused for the offence of Manslaughter contrary to section 195 and 198 of the Penal Code.

Sgd: D.B. Ndunguru

Judge

05/10/2022

PRE SENTENCE HEARING

Ms. Shio – State Attorney: My Lord we pray for the severe sentence to the accused taking into account that the accused has alienated the deceased life. That the deceased was a kind person as he bought bear to the accused. That the deceased had no any resistance also no weapon which could have forced the accused to use excessive force. That is all.

Mr. Eliud Ngao - Defence Counsel: My Lord I pray for the leniency sentence on the following.

That the accused has pleaded guilty thus served time and expenses.

That he has stayed in remand prison for almost three years. Further that the accused is the first offender.

My lord, as it appears the offence happened at a bar while both were drunk anything could have happened to either of them. I pray it be considered.

SENTENCE

The accused has been convicted for the offence of Manslaughter. The statutory sentence of the offence is life imprisonment. This is provided under section 198 of the Penal Code. Life imprisonment is the maximum offence sentence. The law does not provide for the minimum sentence. Further there is no statutory guidance to that effect.

The sentence of life imprisonment is not mandatory but discretionary. In exercising its discretion there are some factors which must be taken into account

The first factor is the level of seriousness of the offence whether high, medium or low and starting and maximum range of sentence at particular level. In considering on the way the offence was committed that the accused and the deceased were in a bar drinking alcohol, I

consider them to be of unsound mind due drunkenness and the two engaged in a fight while resulted to deceased death. I find it to be a low seriousness level of the offence whose sentence range is four (4) years imprisonment or conditional discharge.

The other factor is the relevant aggravating and mitigating factors which may lead to increase or decrease of sentence within the range. Frankly speaking, there is no sound relevant aggravating factor has been brought to my attention. But as regards mitigating factors, the counsel has brought to my attention that the accused is the first offender, he has shown cooperation to the investigation organ, he has family depending on him and that he has pleaded guilty to the offence. To me all these are relevant factors for consideration.

The other factor is the accused's personal circumstances. On that aspect I have considered the cooperation offered by the accused to investigate organ after his arrest. I have also considered the family circumstances of the accused person and the likely impact of sentence on the family.

I have further taken into account the accused plea of guilty as merited factor due to the fact that it is in the public interest as it has served the court's time and expenses in conducting full trial. See

**Charles Mashumbo Vs. Republic (2005) TLR 90 and Swalehe
Ndungajikungu Vs. Republic (2005) TLR 94.**

I have further taken into account the time the accused has spent in remand prison from the date of his arrest to date when the case is coming to its finality that is one year and four months. All those factors make me find that the accused need mercy of this court.

I hereby sentence the accused to serve two (2) years imprisonment in jail for the offence of Manslaughter Contrary to section 195 and 198 of the penal code (Cap 16 R.E 2019).

It is so ordered.




D.B.NDUNGURU

JUDGE

05/10/2022