

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF ARUSHA)**

**AT BABATI**

**CRIMINAL SESSION NO. 21 OF 2021**

*(Originating from PI No. 4/2020 Kiteto District Court at Kiteto)*

**REPUBLIC..... COMPLAINANT**

**VERSUS**

**EMMANUEL MICHAEL @ CHEGE.....ACCUSED**

**SENTENCE**

**18/02/2022 & 28/02/2022**

**GWAE, J**

One Emmanuel Michael @ Chege, was charged and convicted of the offence of Manslaughter contrary to section 195 & 198 of the Penal Code Chapter 16, Revised Edition, 2019 ("Code"). The accused, when arraigned before the court for plea taking, pleaded guilty to the unlawful killing of one Sikambe Parasay (Deceased) on the 16<sup>th</sup> May 2020 at Ndirigishi village within Kiteto District in Manyara Region.

The source of the loss of the deceased's life is as follows; that the accused and deceased met on the material date, drunk local liquor at a certain "pombe shop" however there were misunderstandings that arouse between the two. The deceased became furious and picked his double edged knife ("sime") and unjustifiably cut the accused on the left hand. Having seen so, the accused started running away to salvage his own life

however the deceased person ran after him. Unfortunately, the accused person got drained, he thus, stopped from running. When the deceased wanted to stab him, the accused was able to forcibly take the double edged knife from the deceased and deadly cut him on his (deceased) neck. The accused was apprehended at the scene of crime and he subsequently confessed to have killed the deceased before a police and justice of peace and he promptly pleaded guilty to the court.

It is now therefore the duty of the court to assess an appropriate sentence to be imposed against the accused of course by looking at aggravating factors if any and mitigating factors.

Mr. Ngassa, the learned counsel for the Republic urged this court to impose a custodial sentence to the accused on the ground that despite the fact he was entitled to personal defence yet he stabbed the deceased on a sensitive part of the deceased's body (neck). He however rightly proposed that the seriousness of the commission falls under the lower level as per the manual.

On the other hand, Ms. Natujwa sought lenient sentence ranging from 0-4 years imprisonment by advancing the following mitigating factors; that, circumstances that culminated the commission of the offence should be considered, the deceased being source of his own

death, that, the accused was entitled to self defence, that, the accused is first offender, his plea of guilt, that the accused has sustained maim on his left hand leading his hand to be useless and was medically treated (seen physically and cemented by PF3-DE1).

Considering the circumstances that led to the deceased's death, I am in agreement with the learned advocate for the defence that the deceased is source of his own death. I am saying so simply because it was the deceased who started assaulting the accused with double edged knife which is a serious and dangerous weapon. The accused was cut twice on his left hand and on the back. The accused attempted to run away while excessively bleeding but the deceased person ran after him and finally the accused was unable to proceeding running due to excessive bleedings caused by the deceased. When he stopped, he grabbed the so called 'sime' from the deceased and in the course of his defence, the deceased was deadly cut on his neck. For sake of clarity parts of the spoken words of the accused in his extra judicial statement (PE4) are reproduced herein under;

"Alinikata mkono wa kushoto kwa kutumia sime, niligeuka ili nikimbie, akanikata tena kwenye kisogo, niliogopa maana sikiwa namfahamu. Nilitaka kukimbia zaidi ila nguvu zili kwisha kwa kutoka damu nyingi sana.

Nilishindwa kukimbia nikamshika mkono ulio shika sime,  
Tuliendelea na purukushani za kujitetea bahati mbaya  
sime ikamchoma shingoni. Nikadondoka nikazimia,  
nilipozinduka nikakuta wananchi wamenizingira.....”

The same statement is observed from the accused’s cautioned statement (PE3). In the situation that prevailed on the material date, the accused was entitled to personal defence. The accused’s defence of self-defence was necessary and it was reasonable inference from the actual attack by the deceased taking into account the accused was already cut twice and attempted to run away from the deceased but in vain, his subsequent act was with the object of saving further injury to his own person. It clearly appears from the facts of the case that, the accused’s act of self-defence was reasonable in relation to the violence offered by the deceased. Had the accused failed to exercise such statutory right he would have been killed by the deceased. Section 18 read together with section 18A of the Code read;

18. Subject to the provisions of section 18A, a person is not criminally liable for an act done in the exercise of the right of self defence or the defence of another or the defence of property in accordance with the provisions of this Code.

18A.-(1) Subject to the provisions of this Code every person has the right–

(a) to defend himself or any other person against any unlawful act or assault or violence to the body;  
or

(b) to defend his own property or any property in his lawful possession, custody or under his care or the property of any other person against any unlawful act of seizure or destruction or violence.

In our present case, the accused was really entitled to defend his life against unwarranted assaults and violence from the deceased by actual repelling the deceased's force as was correctly demonstrated in the case of **Nico Peter @ Rast v. Republic** (2006) TLR 84, where Court of Appeal of Tanzania held among other things that:

"There is no evidence that the appellant was repelling an actual attack which would bring into play section 18 A (1) of the Penal Code which provides for defence of self defence".

In our instant criminal case, the facts and exhibits particularly, PE3 and PE4, it goes without saying that the prosecution has failed to any establish any aggravating factor exhibiting that the accused could have any other means than what he did in order to rescue himself from the deceased's unjustifiable acts which were not only wrongful but injurious acts to the life of the accused.


Facts of this case are similar like those in **Manzi Mengi v. Republic** [1964] 1 EA 289 where the deceased wrongly instructed his children to graze the cows in the appellant's farms, the cows were drove out of the farm and returned by the appellant and deceased's children respectively. Subsequently, the deceased went to the appellant's farm while armed with a bow and arrows, fired an arow but missed. The appellant was then attacked by being struck out by bows twice and was then stabbed by arrows, the appellant struck the deceased with a panga repeatedly. He died instantly. The trial court convicted the appellant of manslaughter however on appeal the Court of Appeal of Kenya at Nairobi allowing appeal held that; the appellant was entitled to use lethal force.

In our case as was rightly held in Manzi's case (supra), if the accused had not made use of the double egged knife that the deceased was using it in attacking him, the deceased would probably have killed him.


Having established as herein, I am therefore of the considered view that the seriousness of the offence is on lower level and for the reasons stated I do not need to be curtailed considering other mitigating factors as the accused is found to have been entitled to an absolute defence, as opposed to entitlement of personal defence which is not an absolute, the


absolute defence which attracts a finding that the accused is not criminally liable thus justifying this court to order unconditional discharge (See also page 49 of the Sentencing Manual at Step 3).

That said, the accused is unconditionally discharged. It is so ordered

  
**M. R. GWAE,**  
**JUDGE**  
**28/02/2022**

**Court:** Right of appeal to the Court of Appeal of Tanzania fully explained to the parties.

  
**M. R. GWAE,**  
**JUDGE**  
**28/02/2022**

  
**ORIGINAL**