

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

AT BABATI

CRIMINAL SESSION NO. 25 OF 2019

(Originating from PI No. 24/2017 in the District Court of Babati District at Babati PI. No. 26/2017)

REPUBLIC.....COMPLAINANT

VERSUS

**H. 2443 PC. COSMAS JACKSON
MWANJALA.....ACCUSED**

SENTENCE

17/2/2022 & 24/02/2022

GWAE, J

Originally, the accused person, **EX. H. 2443 PC. Cosmas Jackson Mwanjala** was charged with an offence of murder c/s 196 and 197 of the Penal Code Chapter 16 Revised Edition, 2002. Nevertheless, on the 15th February 2022 when the matter was called on for trial, the accused pleaded guilty to the lesser offence of manslaughter c/s 195 and 198 of the Penal Code Cap 2002, the offer which was rightly accepted by the prosecution and eventually this court convicted. Therefore, the case is now for sentencing him.

Briefly, the facts of the prosecution case against are to the effect that, the accused and deceased, **Regina d/o Daniel** who were husband and

wife respectively but were separated through their own will, on the 27th October 2017 at 18: 00hrs at Usalama Street within Babati District in Manyara Region, the deceased went at the accused's work place at NMB Bank on that particular day. She unsuccessfully demanded Tshs. 10,000/= from him out of Tshs. 60, 000/= the amount of money which the accused used to monthly pay the deceased as maintenance as a result the deceased grabbed the accused while armed with SMG. The gun held by the accused unfortunately fired and deadly shot the deceased who instantly passed away.

According to Mr. Mwegole, the learned senior state attorney, the accused is the first offender and that, he therefore deserves a sentence of lower level pursuant to the Sentencing Manual. He however argued that there was no prohibition to enter into the bank premises.

While joining hands with the counsel for the Republic, the learned defence counsel (Mr. Lister) strongly sought court's leniency during imposition of sentence by advancing the following mitigating factors;

- a. That, the accused was patient but he was violently and suddenly attacked by the deceased and the bullets fired out of own their wishes.

- b. That, the accused exhibited contrition due to the fact that he readily confessed the offence and even before the court they had promptly pleaded guilty when arraigned.
- c. The accused exhibited responsibility as he had already paid Tshs. 50,000/= out of Tshs. 60,000/= he used to monthly pay for the child
- d. The accused had stayed in remand prison for about 4 1/3 years that is 27.10.2017, he must have learnt the way of taking precaution
- e. The accused is now only single parent of the child,
- f. The accused is now aged 31 years old

I have judiciously and seriously taken into account that, the accused person is the first offender who readily and voluntarily pleaded guilty to the offence of manslaughter, he is now only biological parent who is alive of the issue whom he used to care even before demise the demise of the deceased person.

I have also considered the mitigating factor that the accused had stayed in remand that is from 27th October 2017 to date despite the fact that, when the accused was arraigned for plea taking on the 28th day of October 2019, he glaringly offered his plea of guilty to the lesser offence of Manslaughter. The accused is therefore eligible for reduction of a sentence at a rate of lower level as proposed by the parties' counsel (from

0-4 years) jail that would be imposed if the full trial would be conducted as stipulated in the Sentencing Manual.

The stay of remand custody from 2019 to 2022, in my firm opinion, ought to have dispensed of since facts case specifically, the accused's confession and extra judicial statement demonstrate clearly that the accused ought to have been charged with bailable offence (manslaughter) unlike the information initially laid against him. For the reason given above the accused's arbitral detention or stay in prison custody is hereby heavily considered in his mitigation (see **Nyanzala Madaha vs. Republic**. Criminal Appeal No. 135 of 2005 (unreported-CAT)).

As our courts are required to appropriately sentence the accused persons depending on both the aggravating circumstances and mitigating factors. It is clear from the facts that the accused who was entrusted with working tool (SMG) at the Bank was not only entitled to defend his life and the bank's money but also to protect the gun from robbers and any sort of tactics employed to have him robbed the same. Thus, the general public is called upon to respect and avoid to be closer with anyone who is lawfully armed. Hence, the deceased is on the other hand found to have exhibited uncultured or naughty behaviors toward the accused was on duty on the

vital place merely because of claim of Tshs. 10, 000/= which could probably be paid by the accused afterwards.

The law, Penal Code under section 18 (supra) entitles a person to defend a property. However, it is also the duty of the person entrusted or owning a firearm to be more diligent whenever he or she is in a physical possession of the same including being away from criminal or naughty persons or any person whom you suspect to a bandits or violent person like the deceased person. Due to the accused's failure to exercise due diligence, while knowingly that he loaded the rounds of ammunitions in the gun's chamber as distinguished from the decision of the Court of Appeal of Tanzania in the case of **Kimambo vs. Republic** (2003) 2 EA 532 where the appellant was not aware if the gun was loaded.


In this instant case, it is therefore my considered view that, the accused also deserves custodial sentence since he was duty bound to be extra carefully including avoiding being close with deceased person including threatening not to be close with him or even inflicting an assault to her on the part of the deceased which is not sensitive such as on legs, when was he was about to be attacked by the deceased. Due to the observed negligence on the part of the accused person, a police officer who must have attended necessary and elementary police training, an appropriate

sentence to be meted against the accused person is ranked to the medium level and actual sentence ought to **be seven (8) years**.

Having demonstrated as herein above I thus find the accused, the accused deserves eight (8) years jail but subject to reduction of two and four months **2 ^{2/3}** years being 1/3 of the actual sentence and **two and one third (2 ^{1/3})** years being arbitrary detention from when he appeared for the first time before the court (**Mwenempazi, J**).

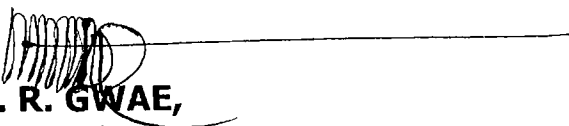
Consequently, the accused is sentenced to custodial sentence of the term of **three (3)** years jail. It is so ordered.

Order accordingly.


M. R. GWAE,
JUDGE
24/02/2022

Court: Right of appeal to the Court of Appeal of Tanzania as far as the imposed sentence is concern by either side fully explained.




M. R. GWAE,
JUDGE
24/02/2022