

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

**AT BABATI**

**CRIMINAL SESSION NO. 32 OF 2021**

*(Originating from PI No. 21/2020 Babati District Court at Babati)*

**REPUBLIC..... COMPLAINANT**

**VERSUS**

**DAMINAN SIMON @ DAMIANO MATLE UMBU.....ACCUSED**

**SENTENCE**

16/02/2022 & 24/02/2022

**GWAE, J**

The accused person, **Damian Simion @ Damiano**, 42 years old as of now, mwirag by tribe and was a resident of Lowa Village, stands charged with the offence of manslaughter contrary to section 195 read together with section 198 of the Penal Code, Cap 16 Revised Edition, 2002 to one **Lucia Gidoba Sulle** who was his wife (deceased) on the 20<sup>th</sup> day of May 2018 at about 18: 00 hrs at Mwinkasi village (at the residence of the accused's in-laws) within Babati District in Manyara Region.

Basing on the accused's plea of guilty, he was convicted by the court on the 16<sup>th</sup> February 2022, it is now for sentencing him in accordance with

law and of course pursuant to the circumstances of the case that is aggravating and mitigating factors.

The learned state attorney, Ms. Kisinga, who prosecuted this case, as used to be in many criminal cases for the prosecution, sought imposition of deterrent/warning sentence against the accused person on the following grounds; offensive weapon used by the accused and infliction of sensitive part of the deceased's body by the accused, the accused had other option especially divorcing the deceased as there had been efforts to reconcile but in vain and that the accused absconded immediately after the fateful incidence deserting his children. The learned counsel for the Republic then urged this court to be pleased to assess the level of the punishment to be high level as per the Sentencing Manual.

Mr. Lister, the defence counsel endeavored in ensuring that the accused is sentenced to a lenient sentence advancing the following seven mitigating factors; **firstly**, that, the accused person is the first offender, **secondly**, that, the circumstances of the case namely; that, the deceased was still the wife of the accused. that, the accused really loved his wife, the accused had not yet regretted. **Thirdly**, that the accused did not go to his father in-law while armed but he picked the matchet due to provocation,

**fourthly**, his state of mind was inordinate or rather he was provoked by the deceased's words that she was planning to be married by another person and that his abscondment might have pertained with fear of loss of his life, **fifthly**, that, the accused's confessions to the responsible officers and his plea of guilty today before this court, **sixthly**, his stay in remand prison for about 1 ¼ years and **seventhly**, the accused has dependents including his 3 children and his parents who are now suffering from dotage

It has been our consistent judicial practice that, merciful sentences should be imposed to accused persons who pleaded guilty to offences leveled against them and of course the ones who are the first offenders. This has been so for many and obvious reasons that, first and foremost avoidance of the possibility of an accused securing an unmerited acquittal through a technical or procedural error as was rightly stressed in the case of **Nilson vs. Republic**. [1970] EA and **Yahana Hassan and Godson Hiza v Republic**, Criminal Appeal No. 16 of 2000 (unreported), by pleading guilty, much of precious time as well as government money are plainly saved, the pleas of guilty exhibit repentance as opposed to falling short of remorse or responsibility of some wrongdoing to another or property of another person. I would like to adhere to the founded principle in **Francis Chilema vs.**

**Republic** (1968) HCD 510 approved by the Court of Appeal in **Paul vs. Republic** (1990–1994) 1 EA 513 and it was held that

“It is generally, if not universally, recognised that an accused pleading guilty to an offence with which he is charged qualifies him for the exercise of mercy from the Court. The reason is, I think obvious, in that one of the main objects of punishment is the reformation of the offender. Contrition is the first step toward reformation, and a confession of a crime, as opposed to brazening it out, is an indication of contrition. Therefore, in such a case a court can, and does impose, a milder sentence than it would otherwise have done.”

Courts’ decisions in **Charles Mashimba v. Republic** (2005) TLR-CAT 90 and **Usin and another vs. Republic** (1973) 1 EA 467 also followed.

I have also considered the mitigating factors that the accused has persons whose welfares depend much on him. Likewise, the period spent by the accused in remand, 1 ¼ years taking into account that accused was formerly charged with the unbailable offence of murder c/s 196 & 1987 of the Code (supra) (See decisions of the Court of Appeal **Augustino Mponda v Republic**. [1991] TLR 97; **James Barnabas alia King Mazishi v Republic**., Criminal Appeal No. 221 of 2004 (unreported); **Republic v Willy Walosha**, Criminal Appeal No. 7 of 2002 (unreported-CAT).

Nevertheless, the prayers advanced by the counsel for the Republic (Ms. Kisinga-SA) are also worth for court's consideration since the accused had other options like divorcing the deceased or turning back to his residence rather than deadly stabbing the deceased by "panga". As matured person, the accused in my view, ought to have controlled his anger though as an African man it was quite unpleasant to be told by the deceased that she was going to be married by another man. Also, use of machet to unarmed person is also blameworthy notwithstanding that he picked the offensive weapon in the residential house of his in-laws. According to circumstances of this case, I am persuaded by a foreign jurisprudence in **Surja Ran v State of Rajanshan** AIR 1997 SC 18, where it was held:

'Punishment must also respond to society's cry for justice against the criminal. When considering the punishment to be given to the accused, the Court should be alive not only to the right of the criminal to be awarded a just and fair punishment by administering justice tempered with such mercy as the criminal may justly deserve but also the rights of the victims of crime to have the assailant appropriately punished and society's reasonable expectation from the Court for the appropriate deterrent punishment conforming to the gravity of the offence and consistent with public

abhorrence for the heinous crime committed by the accused.”


I have also considered the accused person’s subsequent conduct of absconding immediately after the fateful incidence that is from 20<sup>th</sup> May 2018 till when he was apprehended on the 26<sup>th</sup> October 2020. If the accused have exercised humanity, remorse of his unlawful acts and by recognizing that, he had caused loss of his wife’s life and that their issues required his love as only biological parent who remains, in my firm opinion, he would have surrendered himself to police station instead of hiding himself for so long period that is more than two years from May 2018 till when he was arrested on December 2020.

Having endeavored to consider both the aggravating circumstances as well as mitigating factors, I thus find the accused deserves a high-level sentence as per the Tanzania Sentencing Manual for Tanzania Judicial Officers, the sentence of twelve (12) years would meet the justice of this particular offence of homicide. However, as the accused promptly pleaded as earlier explained and in observance of the Sentencing Manual at page 24 where a reduction of 1/3 of the sentence that would have been imposed is

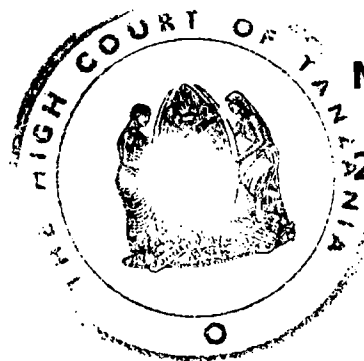

found mandatory as opposed to a situation where the accused does not plead guilty at the time of plea taking.

That said and done, the accused is sentenced to the term of **eight (8)** years imprisonment.

Order accordingly.

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

**Court:** Right of appeal to the Court of Appeal of Tanzania in respect of the imposed sentence to either side is fully explained.

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