

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

AT BABATI

CRIMINAL SESSION NO. 36 OF 2021

(Originating from PI No. 6/2020 Resident Magistrate Court Manyara at Manyara)

REPUBLIC..... COMPLAINANT

VERSUS

QADE JANGWE.....ACCUSED

SENTENCE

16/02/2022 & 24/02/2022

GWAE, J

Initially, the accused, was charged with an offence of murder c/s 196 and 197 of the Penal Code Chapter 16 Revised Edition, 2002. However, during plea taking the accused pleaded to the lesser offence of manslaughter c/s 195 and 198 of the Penal Code Chapter 16 2002, the plea which led to his conviction subject of this sentence.

The prosecution case against the accused is to the fact that on the 13th day of December 2018 at Mureru village within Hanang' District in Manyara the accused unlawfully killed one **Matayo Gileksa** (deceased) by hitting him using a poisonous arrow in the course fight.

I have considerably looked at the mitigating factors that, the deceased's conduct necessitated the application of force by the accused in his self

defence and this is in accordance of section 18 of the Penal Code of the Penal Code Revised Edition, 2002 which reads;

“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”

Since application of section 18 is subject to section 18 A of the Act, it is therefore important to have it quoted herein under:

“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

In order to be in a better position to ascertain if defence of self dence in this particular case it is important to revisit the facts of the case including exhibits so admitted **(PE1)**, it is clear that, the accused applied force in defending himself after the deceased had intended to his hit him with an narrow. In his cautioned statement the accused stated that the deceased when his first poisoned arrow bounced to hit the deceased, he wanted to re-hit the accused by another arrow whereby the accused, in revenge, picked his poisoned arrow and timely and deadly hit the deceased. For

the sake of clarity, parts of the accused statement are reproduced herein under;

"Mshale was sumu kwenye upindealivuta akielekeza kwangu nikaukwepa ukachoma chini. Nilivyoona hivyo wakati yeye Mathayos/o Gileya alitaka kuweka mshale wa pili nilivuta mashale wa sumu nikampigausawa wa figo, ule mshale ulikuwa na sumu ya kuua Wanyama ambayo ni kali sana....."

Considering the accused's cautioned statement, it is glaringly observed that the accused person applied reasonable force as to that one applied by the deceased. It follows therefore, the accused was 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 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, had the accused failed to timely exercise his right of defence, he would have been killed by the deceased who was also using poisoned arrows to hit him. Perhaps in this situation the accused had only way forward if at all he was to circumvent the killing of the

deceased, that is running away which could probably cause his death if hit by the deceased while running.

I have also considered the mitigating factors that the accused is the first offender, he has persons whose welfares depend much on him and that he had pleaded guilty to the offence not only to the court but also before police officer as substantiated by his cautioned statement (PE1). The accused's conducts inevitably deserve lenient sentence be imposed (see **Lubaga Senga v. Republic** (1992) TLR and **Abdu and another v Republic** (1971) 1 EA 198).

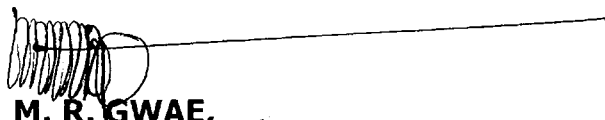
Similarly, I have seriously considered the period spent by the accused in remand prison, it clearly established that since December 2019 to date the accused was in remand since the offence with which he initially stood charged was unbailable. (See decision of the Supreme Court of Uganda in **Kizito vs. Uganda** (2002) 2 EA 424).

On other hand, as rightly argued by Miss Rhoida Kisinga that, the accused applied offensive weapon, poisoned arrow with full knowledge that the same is poisonous and dangerous to the deceased person's life and worse enough he directed the poisoned arrow to the deceased's kidney which is a sensitive part of any human being.

I have noticed the accused person's subsequent conduct of absconding immediately after the fateful occurrence which also bears condemnation. The best option for the accused was to surrender himself to police instead of hiding himself for a period of a solid year (December 2018-December 2019).

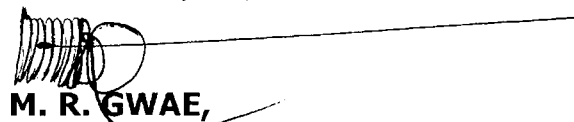
Having considered both aggravating circumstances and mitigating factors, I thus find the accused to deserve a sentence whose gravity is low level sentence as per the Sentencing Manual for Tanzania Judicial Officers. Consequently, the accused is sentenced to custodial sentence of the term of **two (2)** years jail. It is so ordered.

Order accordingly.


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

Court: Right of appeal by either side fully explained.




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