

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF ARUSHA)

AT BABATI

CRIMINAL SESSION NO. 38 OF 2021

(Originating from PI No. 3/2019 Manyara Resident Magistrate Court)

REPUBLIC..... COMPLAINANT

VERSUS

BENJAMINI DAUDI.....ACCUSED

SENTENCE

16/02/2022 &24/02/2022

GWAE, J

Formerly, the accused person, **Benjamin Daud, Mufwomi**, 24 years as of now, a peasant was charged with the offence of Murder contrary to section 196 read together with section 197 of the Penal Code, Cap 16 Revised Edition, 2002. Nevertheless, he promptly pleaded guilty to the offence of manslaughter, the plea which was focusedly accepted by the prosecution under the lead of Mr. Ngassa-SA. He was convicted of the offence of Manslaughter c/s 195 and 198 of the Code (supra). Hence, necessitating this court to prepare a sentence which is expected to meet the justice of this fateful occurrence.

The facts of the case envisage that, the accused and deceased had love affairs with their elder brother's wife known by name of Betha. There

was therefore jealous between the deceased and accused person, on the material date the accused wanted to be refunded his money which he gave the deceased as a fare in favour of the so called "mchepuko".

Though the prosecution side had no previous conviction record in respect of the accused yet the learned state attorney prayed for an imposition of a stiff sentence against the accused on the basis of his unflattering behavior. He thus opined that the accused's custodial sentence be of medium level. Whereas, the defence with assistance of Mr. Festo sought lenient imposition of lenient sentence on the following mitigating factors;

1. As just stated by the prosecution that the accused is the first offender
2. Circumstances that culminated the commission of the offence should be considered, that is to say the deceased and accused are blood related. The accused person was younger than the deceased
3. The death in question was quite a misfortune
4. The accused has saved the precious time of the court as well as expense by pleading guilty
5. The accused's age by then was too young that is why he did what could not be done by sound and matured person

6. The accused has stayed in remand for more three years that is since January 2019. His stay in prison remand, must have rehabilitated him.
7. The accused is youth, energetic and useful for the Nation
8. The accused and deceased were blood related brothers and the source of the incidence is the said Betha. More so, the accused's father has lost two persons in his homestead.

Considering not only that the accused's plea of guilty before the court during plea taking but also his confessions to a police officer as well as to a Justice of Peace (PE2 & PE1), I think the accused deserves a court's reduction of a custodial sentence at the rate of 1/3 that would have been imposed in the circumstance of this case (See **Paul vs. Republic** (1990–1994) 1 EA 513 (CAT)). The accused person's stay in remand since January 2019 to date (February 2022) when he offers a plea of guilty to the offence of manslaughter, that constitutes a stay in prison custody of more than three (3) years.

It is also the requirement of the law that, the time spent in prison remand should be taken into consideration whenever our courts consider appropriate sentence to be imposed against a convict who had spent time in prison custody waiting for trial or plea as the case here. The essence being that period of time spent in custody being problems administration of

justice in the country including but not limited to wrongly charging the accused persons of murder instead of manslaughter where facts of the case require so should not be loaded on the accused persons who are helpless and cannot do anything about to get rid of (See **Augustino Mponda vs. Republic** [1991] TLR 97 and James **Mazishi vs. Republic** Criminal. Appeal No. 221 of 2004 (unreported))

I have further seriously considered the mitigating factor that the deceased was entitled to personal defence as per section 18A of the Code (supra), in our case the deceased who was elder than the accused started strangling the accused, the act which culminated to his unnatural death. Thus, had the accused failed to overcome the deceased, he would have been unlawfully killed by the deceased (PE1- "Nilimwambia sitaki ugomvi aligeuka na kunishika jensi nami nikamshika.....nikakaba koo kabisa..tulikamatana nilimshika koo kwa nguvu nae amenishika akasema kama wewe ni mwanaume usipige kelele, nilinyamaza na niliona mkono umelegea. Kumbe ameshakata roho"). It is therefore my considered view that the accused was therefore supposed, in the circumstances of the case, to repel the deceased's force.


Without undue regard to the aggravating circumstances advanced by the counsel for the Republic (Mr. Ngassa-SA), the accused's previous

behavior of dating with his sister in-law is noted immoral and uncultural. More so, his subsequent acts of taking the deceased's corpse, burying it in canyon, being silent with disclosing or narrating the incidence to his even his parents from June to December when the dead was discovered through his lead. These behaviors require deterrent sentence. If there were not bad behaviors noted from the accused, the sentence at low level would merit the case at hand.

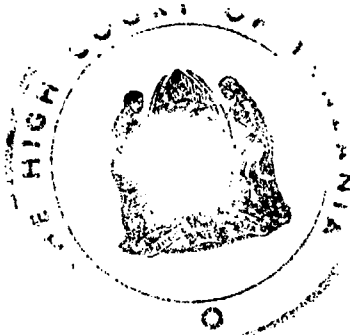
Following the accused's conducts aforementioned, I am of the formed view that, the medium level sentence, is justifiable as per the Tanzania Sentencing Manual for Tanzania Judicial Officers, the sentence of nine (9) years would meet the justice of this particular offence of homicide. However, as the accused promptly pleaded guilty 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 if there was no plea of guilty on the part of the accused necessitating full trial.

Consequently, the accused is sentenced to the term of **six (6)** years imprisonment.

It is so ordered.


M. R. GWAE
JUDGE
24/02/2022

Court: Right of appeal by either party fully explained.



M. R. GWAE

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