

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

**AT BABATI**

**CRIMINAL SESSION NO. 46 OF 2020**

*(Originating from Kiteto at Kibaya District Court PI. No. 2/2017)*

**REPUBLIC..... COMPLAINANT**

**VERSUS**

**FRANK MASHAKA.....ACCUSED**

***SENTENCE***

**25/2/2022 & 08/03/2022**

**GWAE, J**

Having convicted the accused person, **Frank Mashaka** of the offence of manslaughter c/s 195 and 198 of the Penal Code Cap 2002 of one Chiwene Mashaka @Adam Nyange on the 30<sup>th</sup> December 2016 at Chang'ombe village within Kiteto District in Manyara Region.

Briefly, the facts of the prosecution were as follows; That, the accused and deceased are siblings. Prior to the material date the accused suspected the deceased, to be a prime suspect of his stolen valuable items, namely; solar and its battery on the ground that he is a habitual thief in the village. He eventually deadly shot by using a short gun. The accused did not disclose the fateful incidence and he also hid the offensive gun till when he was

arrested by police whom he led to the place where they hid the offensive weapon (Gobore).

In punishing the accused of the offence, I must first assign the gravity or seriousness of the offence. Looking at the facts of the case especially on the extent of injuries and offensive weapon, local made gun commonly known as "gobore" used by the offender, I am compelled to assign the gravity of the offence to be of high level as proposed by Ms. Kisinga, the learned state attorney for the Republic.

Having ranked the severity of the offence, now, I have to go into considering the aggravating factors and mitigating factors. Ms. Kisinga, though did not have any record regarding the accused person's previous conviction yet she seriously sought for an imposition of a preventive sentence against the offender armed with the following grounds; the deceased was married, type of weapon (gun), part of the body injured (chest) is sensitive part of human body, the act of the offender to taking the law into his own hands instead of reporting the theft to the law enforcement machinery and that the accused temporarily possessed the so called gobore illegally.

On the other hand, Mr. Ayo representing the offender, had the following mitigating factors which according to him deserve court's mercy, these are;

1. The accused is the first offender
2. The accused has stayed in prison custody for more than five years
3. The accused has one child whose biological mother has passed away as she committed suicide while the accused was in custody following being avoided by the deceased's family.
4. The accused was, by then adolescence/foolish age and he is illiterate
5. The accused is now aged 26
6. Force used by the accused was reasonable

I have seriously considered the above aggravating circumstances advanced by the learned counsel that weapon applied in killing the deceased, part of the deceased's body inflicting the deceased was so sensitive (Chest), need for prohibition of our society of taking the law into their own hands. There was preparation on the part of the accused for the fateful incidence, lack of remorse on the part of the deceased as he did not rush him to hospital. Also, the act of the accused of possessing the gun illegally. I am also of the considered view that, the force used was excessive as opposed to the

contention by his counsel to enable the accused person benefit from provisions of section 18A (1) (B) of the Penal Code in defence of property I however considered the offender's personal circumstances especially his age at the commission of the offence, by then he was aged 19 years a lesser role played in the killing as the one who was actual offender was Mnyandwa Daimon who deadly killed the deceased person as clearly shown in the extra judicial statement and cautioned statement (PE2&PE3) ("Aliyepiga aliyekuwa na bunduki ni mnyandwa Daimon"). I have also taken into account that, the offender he has a child whose mother had passed away due to the act of being shunned by the deceased's family including the deceased's wife without undue regard to the fact that the accused is the first offender (See judicial decision in **Mathis Masaka v. Republic**, Criminal Appeal No. 274 of 2009 (unreported-CAT) and in **Kizito v. Uganda** (2002) 2 EA 424-SCU). More so, the act of confessing before justice of peace (PE2) and a police officer (PE3) is an indication of contrition (See **Paul v. Republic** (1990-94) 1EA 513).


After I have considered both the aggravating circumstances and mitigating factors an appropriate sentence to be meted against the accused person is ranked to the medium level and actual sentence ought to be **twenty (20)**

years imprisonment in order that the imposed sentence may operate as deterrence to our society especially those who take the law into their hands by punishing or killing the offenders through the so called "mob justice" ('wananchi wenye hasira kali').

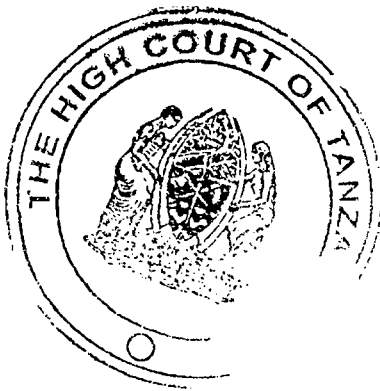
Having fixed the actual sentence, I now turn to looking at the accused's plea of guilty, by pleading guilty though late, the accused person must expect a court's merciful sentence following his plea of guilty which has in deed saved precious time of the court as well as that of the parties and money as well. However, as the accused did not exhibit or indicate his plea to a lesser offence from very beginning that is during plea taking for example by pleading that, it is true that, he killed the deceased but it was not intentional, he should not benefit a reduction of the actual sentence by  $\frac{1}{3}$  except  $\frac{1}{4}$  which brings a reduction of **5** years jail from the actual sentence (20) (See page 24 of the Sentencing Manual). I have also considered the period (**5 1/6 years**) in which the accused was in arbitrary detention from when he was put under police custody and prison custody (31<sup>st</sup> December 2016 to date that is 8<sup>th</sup> day of March 2022). That period of five and two months is deemed to have been served by the accused person (See page 50 of the Manual).


Consequently, the accused is sentenced to custodial sentence for the term of **fifteen (15)** years imprisonment starting from date when he was in police custody and prison custody that is from 31<sup>st</sup> December 2016.

Order accordingly.

  
**M. R. GWAE,**  
**JUDGE**  
**08/03/2022**

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



  
**M. R. GWAE,**  
**JUDGE**  
**08/03/2022**