

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

AT BABATI

CRIMINAL SESSION NO. 56 OF 2019

(Originating from PI. No. 18/2017 in the District Court of Babati at Babati)

REPUBLIC.....COMPLAINANT

VERSUS

HASHIMU IDD JUMA..... ACCUSED

SENTENCE

22/02/2022 & 28/02/2022

The Accused now offender, **Hashimu Idd Juma** was initially indicted with the offence of murder with the offence of murder contrary to section 196 of the Penal Code Chapter 16, R. E, 2002 ("Code"). It was alleged that on the 20th August 2017 at Hagoni A within Babati District in Manyara Region, the Accused did murder one Michael s/o Andrew @ Muhamed s/Andrea. However, when the case was called on for the scheduled trial, the accused person offered a plea of guilty to the lesser offence.

Eventually, the accused person was found guilty of the offence of manslaughter c/s 195 read together with section 198 of the Code, I am required to assess suitable sentence depending on the aggravating and mitigating factors given by the parties' representatives notably; Miss

Rhoida Kisinga and Miss Natujwa Bakari for the Republic and accused respectively.

Miss Kisinga briefly prayed for an imposition of a merciful sentence and ranks the seriousness of the commission of the offence to be of low level, according to her, the deceased did not even like to pay cooperation in treating the accused's son whom he knocked by his motorcycle and that the deceased escaped after the occurrence of the accident.

Equally, Ms. Natujwa sought for a lenient sentence on the following grounds; that, the accused is the first offender, he was provoked, that, the accused has saved the court's precious time and money as well by pleading guilty, that, the accused has stayed in prison custody and that the accused has three children depending on him.

As both parties' counsel had plainly commended on the defence of provocation is provided under section 13 (1) (c) of the Penal Code where an accused is deemed to have no control of the act or omission in question, I should therefore be guided by a decision of Court of Appeal of Tanzania in **Mwamanda v. Republic** [1990–1994] 1 EA 432 where it was correctly held;

“For the defence of provocation to reduce a potential conviction for murder or manslaughter, it must be proved

that the accused killed in the heat of passion caused by the sudden provocation and before there was, time for the passion to cool.

the killing done one year after the alleged provocation lacked the element of suddenness. The killing was therefore with malice aforethought and the conviction for murder would be sustained”.

In our instant case, despite, provocative acts done by the deceased and motorcycle's owner yet the accused is found not clearly covered by provision of the law as shall be demonstrated herein under.

I find that the accused was not in a heat of passion since in the eye of the law the time from when the accident occurred (July 2016) to when (August 2017) he deadly assaulted the deceased person had sufficiently elapsed. However, the wrongful act of killing another by the accused in the present case does not warrant to the offence of murder except the offence of manslaughter due to the following circumstances; that, the deceased did not exhibit any humanity after the accident which he caused as he did not cooperate with the accused, the victim's father, he ran away immediately after the accident and he kept not greeting the accused whenever he met him. The intention of the accused was merely to revenge or rather to personally punish the deceased by effecting injuries

on his body just like those sustained by his daughter, Amina Hashimu as exhibited in the accused's cautioned statement, PE2 which reads;

"Ndipo nilipomwambia kuwa lazima nimjeruhi na ashonwe nyuzi kama alivyoshonwa mtoto wangu Amina..... nikachukua kipande cha neti, nikamfunga mikono kwa nyuma nikachukua kipande cha mti nikampiga miguuni na mikononi, nikachukua kipande cha bati nikamchoma nacho sehemu ya kwenye kidevu".

Despite slight provocative acts of both deceased and the owner of the motorcycle who only refunded Tshs.50, 000/= out of agreed Tshs. 150,000/=being medical fees incurred by the accused whilst the accused had already withdrawn the traffic case against the deceased yet the accused person was required to be patient. As far as sentencing is concern, the acts of the accused, constitute unjustifiable reprimand/ chastisement to the deceased. How can it be possible for the mob justice or individuals to be permitted to take laws into their hands? That is wrong and impermissible. The courts cannot therefore accept that uncultured and uncivilized actions. Generally, the laws of the country abhor or discourage applications of forces in revenge to thieves or any other wrongful doers like the present accused person.


Having established as herein, I am therefore of the considered view that the gravity of the offence is on **medium level** whose sentence starts from 4 to 10 years.

However, considering the mitigating factors, the accused is the first offender, the accused's personal exceptional circumstances that is, that, the accused is having children who are depending on him. His subsequent conducts of surrendering himself to police, though there was provocation which was too remote, but there was such element on the part of the accused. Therefore, the actual sentence is **eight (8)** years jail.

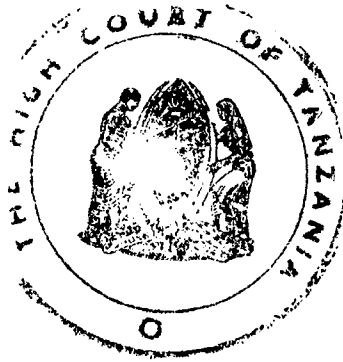
Being guided by the Tanzanian Sentencing Manual, a reduction of $\frac{1}{4}$ of the said custodial sentence following the accused person's plea of guilty when the matter was placed before me for trial, is mandatory, the term of seven years jail is reduced to **six (6)** years jail.


Basing on the foregoing reasons, the offender, **Hashimu Idd Juma** is sentenced **to six (6)** years imprisonment, to start from when he was placed in police custody on the 20th August 2017.

Order accordingly.


M. R. GWAE,
JUDGE
28/02/2022

Court: Right of appeal to the Court of Appeal of Tanzania fully explained to the parties.




M. R. GWAE,
JUDGE
28/02/2022