

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

AT BABATI

CRIMINAL SESSION NO. 94 OF 2019

(Originating from District Court of Babati District at Babati PI. No. 08 OF 2017)

REPUBLIC.....COMPLAINANT

VERSUS

SISTI RICHARD @JOSEPH.....1ST ACCUSED

BOAY PHILIPO.....2ND ACCUSED

SENTENCE

28/20/2022 & 28/02/2022

GWAE, J

The 1st Accused person now offender one **Sisti Richard @ Joseph** was initially indicted with the offence of murder contrary to section 196 of the Penal Code Chapter 16, Revised Edition, 2002 ("Code"). It was alleged that on the 16th April 2017 at Bashnet Village Babati District in Manyara Region, the Accused did murder one Elisante Doday. However, when the case was called on for the scheduled trial and when a total number of nine (9) witnesses have entered appearance for the same, the 1st accused person offered a plea of guilty to the lesser offence of manslaughter c/s

195 and 198 of the Code (supra) and was accordingly convicted of the said offence.

In assessing the sentence, I am required to first assess appropriate level of gravity of the offence in question, the learned counsel for the Republic; Mr. Ngassa (SA) proposed the level of the offence to be high level. Having considered the extent of injuries perpetrated to the deceased as revealed by the Postmortem Report (PE1) namely; a hole in cervical nerves inflicted by using a blunt object (big wood/dangerous weapon), amputated left hand, disarticulation of right fingers by using sharp object, string tightened to the deceased's neck. According to nature of weapons used in killing the deceased, the killing of the deceased was brutal one. My holding is justified by the decision of the Court of Appeal of Tanzania sitting at Mwanza in **Marco Elias vs. Republic**, Criminal Appeal No. 460 of 2016 (unreported) delivered on the 6th December 2018 it was stated at page 9 that;

"We think that even if the learned trial judge had considered the appellant's antecedents and mitigating factors explicitly and in detail, he would not have arrived at a lesser sentence because there were aggravating circumstances that militated against the

course. In this regard, we agree with Mr. Merumba that the killing in this case was vicious, that the weapon used was lethal.....”.

In this criminal case, taking into account of offensive weapons namely; big and round stick (PE7), sharp object, severe and several cut wounds, the killing in question is therefore spiteful. I am therefore justified to rank the gravity of the committed offence by the accused to be **high level** whose sentence is from ten to life imprisonment (Step No.3).

Now to the third step, I have to consider both aggravating factors and mitigating factors. Mr. Ngassa for the Republic, briefly prayed for an imposition of a deterrent sentence on the ground the accused person repeatedly and grievously harmed the deceased person whilst Mr. Abdallah, the defence counsel for the 1st accused sought for a lenient sentence on the following grounds; that, the accused is the first offender, he was attacked by the deceased, that, the accused has saved the court's precious time and money as well by pleading guilty and that, the accused has stayed in prison custody.

In our instant case, despite undeniable fact that, the offender was entitled to self defence as per provisions of section 18 read together with

section 18A of the Penal Code (supra) yet his acts of wounding or assaulting the deceased severally by using dangerous weapons (big and round wood/stick on the sensitive part of the deceased's body (neck) and subsequent conducts of heartless acts of amputating the deceased's fingers and left hand and his subsequently act of throwing the deceased's body into garbage dump. Thus, making him criminally liable as the force applied was excessive and unreasonable (See section 18C (2) of the Penal Code (supra)) In order to meet the ends of justice in this particular case, in my considered view, the accused deserves deserves a custodial sentence within the high level.


However, considering the mitigating factors, namely; the 1st accused is the first offender, the factor which entitles him a merciful sentence (See a judicial jurisprudence in **Lubaga Senga v. Republic** (1992) TLR) and that factor that, the offender had spent time in custody since 22nd April 2017 to date is hereby considered as required, the same is deemed to have been served by the offender. Therefore, the actual sentence against the offender is thus in the term of **twenty-eight (28)** years imprisonment.

Furthermore, being guided by the Tanzanian Sentencing Manual, step 6, a reduction of 1/4 of the said custodial sentence following the accused

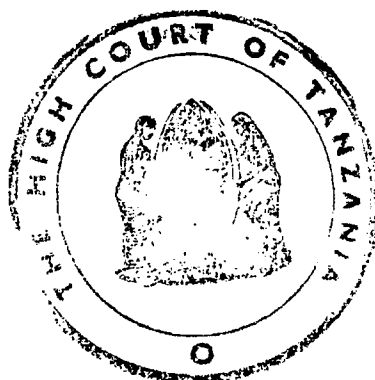
person's plea of guilty when the matter was placed before me for trial and when prosecution witnesses had entered appearance as opposed to an indication of plea of guilty during plea taking whose reduction is 1/3 of the actual sentence, the term of twenty-eight years jail is thus reduced to **twenty-one (21) years jail**.


Basing on the foregoing reasons, the offender, **Sisti Richard @ Joseph** is hereby sentenced to the term of **twenty-one (21) years** imprisonment in order to be a deterrence to the public at large, the imposed sentence to start running from when he was placed in police custody that is on the 22nd April 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