

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

AT ARUSHA

CRIMINAL SESSION CASE NO. 13 OF 2022

(Originating from PI No. 16/2020 Resident Magistrate's Court of Arusha)

THE REPUBLIC..... COMPLAINANT

VERSUS

MARTIN DHUGA BYNET..... ACCUSED

PROCEEDINGS

Date: 09/05/2022

Coram: J.C. Tiganga, J

Ms. Akisa Mhando, Senior State Attorney for Republic;

Mr. Vicent Stewart Nyange, Advocate for the accused person;

Accused **Martin Dhuga Bynet** is present under custody and represented by

Mr. Mr. Vincent Stewart Nyange, Advocate

C/C: Felister Bisangwa

Ms. Akisa Mhando, Senior State Attorney: My Lord, the matter is called for plea and preliminary hearing. We are ready.

Mr. Stewart: My Lord, I am representing the accused person, my Lord, my client has asked us to plea to the Court that she be charged with the lesser offence of Manslaughter.

Accused: It is true that, I have asked my Advocate to ask for that.

SGD: J.C. TIGANGA

JUDGE

09/05/2022

Ms. Akisa Mhando, Senior State Attorney:

My Lord, we have no objection, therefore we pray to substitute the charge of Murder to Manslaughter c/s 195 and 198 of the Penal Code [Cap 16 R.E. 2019].

SGD: J.C. TIGANGA

JUDGE

09/05/2022

COURT:

Following the prayers by the accused person which was presented through his Advocate, to plea for the lesser offence of Manslaughter and the no objection by the learned Senior State Attorney, which results into the substitution of the case to Manslaughter c/s 195 and 198 of the Penal Code, the information of murder is hereby substituted to one of Manslaughter c/s 195 of the Penal Code Cap 16 R.E. 2019]. The accused person is called upon to plea to the new information of manslaughter.

SGD: J.C. TIGANGA

JUDGE

09/05/2022

COURT: New charge/information of Manslaughter contrary to Section 195 of the Penal Code read to the accused person who is required to plea and plead thereto.

Accused: It is true my Lord,

Court: Entered as a "Plea of Guilty".

SGD: J.C. TIGANGA

JUDGE

09/05/2022

FACTS

Ms. Akisa Mhando:

My Lord, the accused is Martina Dugah Bynet, she was 30 years old when she committed the offence. She resides at Olmateves in Arusha District within Arusha Region. She is charged under Section 195 and 198 of the Penal Code [Cap 16 R.E. 2019] with the offence of Manslaughter, under Section 195 and 198 of the Penal Code [Cap 16 R.E. 2019].

The offence was committed on 19/01/2020, at night at Olamateves, in Arusha District within Arusha Region where the accused person was

accused to have caused death of Eliuteri S/O Anthony Akonaay who is the deceased by stabbing him with knife on his neck.

The facts are that the accused and the deceased were tenants in the same house and on the fateful day, one Carol Joseph who is a co-tenant of the accused and the deceased heard the accused shouting from her room saying "*wezi wezi nimevamiwa, mnatafuta nini?*" after hearing that voice, Carol Joseph went out to know what had happened to the accused person. He did light his phone's torch and lighted at the door of the accused person. It was when he saw the deceased laying down with blood flowing from his neck.

Carol Joseph called neighbours for help and called the hamlet chairman as well as a ten-cell leader, who arrived and arrested the accused from her house and reported the matter to Police. The police arrived at the incident and drew the sketch map. The deceased was taken to Mount Meru for examination and the examination revealed that the cause of death was severe hemorrhage shock, or excessive bleeding.

The accused was taken to the justice of the peace where she admitted or confessed to have caused the death of the deceased and that at the time of killing she did not know that the person she stabbed was the deceased.

The accused was thereafter charged before the court where he has pleaded guilty to the offence of Manslaughter c/s 195 and 198 of the Penal Code (supra).

To support this case, we pray to tender the search and seizure certificate of knife, the confession statement of the accused person, the sketch map of the scene of crime, and the post mortem examination report of the body of the deceased Eliuter Anthony Akonaay.

That is all.

SGD: J.C. TIGANGA
JUDGE
09/05/2022

Mr. Stewart: My Lord, we have no objection.

SGD: J.C. TIGANGA
JUDGE
09/05/2022

COURT: Post Mortem examination report (legal) is admitted and marked as exhibit P.1.

SGD: J.C. TIGANGA
JUDGE
09/05/2022

COURT:

- (i) Search and seizure certificate admitted and marked as Exhibit P1.
- (ii) The sketch map of the scene of crime admitted and marked as Exhibit P.2.
- (iii) The confessed statement of the accused person admitted and marked as Exhibit P.3.
- (iv) The Post Mortem examination report of the deceased admitted and marked as exhibit P.4.

SGD: J.C. TIGANGA

JUDGE

09/05/2022

Accused response to the facts:

- i. I admit my name and personal particulars as they appear in the charge.
- ii. I admit that, the deceased was my co-tenant in the same house.
- iii. I admit that, the deceased at the night of the fateful day came to me and started knocking.
- iv. I admit that the deceased knocked and actually broke the house and I screamed, our fellow tenant heard.

- v. I admit to have stabbed the deceased with the knife on his neck and he fall down.
- vi. I admit that he fell down and over bleed, something which caused his death.
- vii. I did not know who he was when he entered in the room I was renting.
- viii. I admit to be arrested, taken to police where I was interrogated and admit the offence.
- ix. I admit to be talking to the justice of peace where I also confessed to commit the offence.
- x. I admit to have been charged and today I have pleaded guilty to the offence.

That is all.

MEMORUNDUM OF UNDISPUTED FACTS:

- i. Accused person has admitted to her names and personal particulars as they appear in the charge sheet.
- ii. The accused has admitted to be the co-tenant of the deceased and that on the fateful day the deceased went and forcefully knocked her door.

- iii. The accused has admitted that, she did not open the door and following refusal to open, the deceased broke the door and entered inside where he found the accused with the knife, and in the darkness did stab the deceased to death.
- iv. That she rose alarm calling for help that she was invaded by thieves and that when the neighbour Carol came.
- v. She admitted to be arrested, interrogated by the Police where he admitted to commit the offence but did know the person she stabbed.
- vi. That he also confessed before the justice of the peace.
- vii. That she was charged and today has pleaded guilty to the charge.

Signed by the Accused: SGD 09/05/2022

Signed by Advocate: SGD 09/05/2022

Signed by SSA: SGD 09/05/2022

I certify that parties have signed before me.

SGD: J.C. TIGANGA
JUDGE
09/05/2022

FINDINGS

Having heard the accused person's plea to the charge/information and the response to the facts in support of the charge, I am satisfied that the accused has pleaded guilty to the offence of Manslaughter contrary to section 195 of the Penal Code [Cap 16 R.E. 2019]. I find the plea to be unequivocal, clear and unambiguous, I thus find him guilty and convict him as charged.

It is so ordered.

SGD: J.C. TIGANGA

JUDGE

09/05/2022

PREVIOUS CRIMINAL RECORD:

We have no criminal record; However, we pray that the accused person be charged in accordance with the law.

That is all.

MITIGATION OF SENTENCE

My Lord, the accused is the 1st offender, and has never committed any offence before. The accused is depended upon by her family, she has four children all depending on her, including the younger children.

She is also taking care her mother who is very old and who is now taking care of the children. The whole family depends on her and she was deserted by her husband for about four years ago.

Since she has admitted the offence by pleading guilty to the offence, and she was self-defending when she committed the offence, we pray the accused person to be given the conditional discharge and by her condition she is a HIV positive and is using medicine to boost her immunity, so we pray that custodial sentence would not be appropriate. Lastly we pray the accused to be discharged or otherwise, we pray that she be given a non-custodial sentence my Lord.

That is all.

SGD: J.C. TIGANGA

JUDGE

09/05/2022

SENTENCE

Considering the fact that the accused person has pleaded guilty to the offence and is found to be the first offender, and taking into account the circumstances and condition in which the offence was committed, as well as the mitigation of the sentence as presented by the learned defence counsel, which include the health condition of the accused person, being

a single parent, having depended upon by her children and parents. It is in the interest of justice that custodial sentence will not serve justice.

That said, and on the deep consideration of the above factors, I hereby sentence the accused to conditional discharge which in my view will serve justice of the case.

It is so ordered.

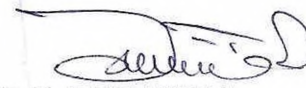


J.C. TIGANGA

JUDGE

09/05/2022

COURT: Sentence pronounced in open court in the presence of the accused and the learned Senior State Attorney, Ms. Akisa Mhando, as well as the defence counsel as per coram.



J.C. TIGANGA

JUDGE

09/05/2022