

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)
AT ARUSHA
CRIMINAL SESSIONS NO. 24 OF 2021**

REPUBLIC.....COMPLAINANT

VERSUS

AMANI ALPHAYO @ MBISE.....ACCUSED PERSON

SENTENCE

17/05/2022 & 25/05/2022

GWAE, J

The accused, **Amani Alphayo @ Mbise**, aged 43, by then, a peasant and resident of Midawe village within Arumeru District in Arusha Region was arraigned with the information of the offence of Murder c/s 196 of the Penal Code. Chapter 16, Revised Edition, 2002 ("the Code") on the 28th day of April 2022. He readily pleaded guilty to the offence of manslaughter c/s 198 of the Code. The accused's offer was accepted by the Prosecution and it is in the basis of his plea of guilty, he was convicted of that lesser offence of Manslaughter.

It was alleged by the prosecution that on the 26th day of December 2020 at Midawe village in Bangata Ward within Arumeru District in Arusha

Region, the accused unlawfully murder **Elinisafi Noah Akyoo** (deceased person).

According to the facts of the case, the accused caused the deceased's death in the course of sexual intercourse in a farm when the deceased's husband was on duty. The deceased failed to properly breath oxygen and the accused unsuccessfully attempted to assist the deceased. The accused absconded immediately after the fatal incident however she came back and surrendered himself to the Arumeru District Commissioner.

Miss Silayo briefly prayed for an imposition of a custodial sentence due to the accused's acts namely; terminating the deceased's life, failure to report the incident to police and having sexual intercourse in the unconducive environment and she ranked the seriousness of the commission of the offence to be between medium and low level.

On the other hand, Mr. John sought an order meting a lenient sentence in favour of the accused on the following grounds; **firstly**, that, long and good relationship that existed between the accused person and deceased, **secondly**, that circumstances surrounding the case including human assistance offered by the accused person and contribution of the deceased

towards to her own death, **thirdly**, that, the accused surrendered himself to police which is a contrition of the offence, **fourthly**, that, the accused has four children and one wife, **fifly**, that the accused has been lawful custody since 1st January 2021, sixthly, that, the accused is the first offender and he had pleaded guilty.

Examining both aggravating and mitigating factors advanced by the parties' counsel, I have come up with the view that the deceased's death was very unforeseen. I say so simply because the deceased and accused did plan to have sexual intercourse in a farm owned by Zephania Mbise. They met at that farm to implement their mission and in the course of the sex, the deceased shortly started sniffling with difficulties leading to suffocation. The accused tried to assist the deceased by swaying her and bringing water for her but in vain. The deceased then passed away. The accused having noticed that his fiancée had died he absconded and went to Simiyu Region on the following day. For clarity part of his cautioned statement (PE3) is hereunder reproduced;

"Wakati nimeingiza uume wangu ndani ya uke wake, alianza kusema kuwa kifua kimembana anashindwa kupumua ndipo mimi nilitoa umme wangu ndani ya uke wake na kuanza kumpepea kwa kutumia dera yake.....ndipo niliamua kwenda kumtafutia maji ya

kunywa....alikunywa maji yale hayakumsaidia, ndipo hazikupita hata dakika kumi baada ya kunywa maji akafariki. Baada ya kuona amefariki ndipo mimi nilipoondoka... niliogopa kutokana na kwamba hilo si sio tukio la kawaida kwangu”.

Though the accused absconded immediately after the deceased's demise yet his escape was clearly associated with fear. Hence, he bears less responsibility.

Having established as herein, I am therefore of the considered view that the gravity or level of the seriousness of the offence is low **level** whose sentence starts from to conditional discharge to four years jail (See Tanzania Sentencing Manual at page 49).

I have also considered the mitigating factors that the accused person is the first offender (See a judicial decisions in **Abdu and another v Republic** (1971) 1 EA 198 and **Mathias s/o Masaka v. Republic** Criminal Appeal No. 274 of 2009 (unreported-CAT)) as well as the accused's personal and exceptional circumstances which are capable of decreasing the custodial sentence; having children who are depending on him and his subsequent conduct of surrendering himself to the Arumeru District Commissioner. Considering the accused's mitigating factors graspingly, the sentence that

the accused deserves is **three (3)** years imprisonment if the case was contested at the trial.

Basing on the Tanzanian Sentencing Manual, I have further taken into account that the accused has pleaded guilty and he has given the indication of plea of guilty at the first opportunity when arraigned for the offence of murder. Therefore, the accused is given benefit of his plea of guilty for 1/3 of the sentence (**three (3)** years jail) that he would have been sentenced if the case had proceeded to a full trial. The said three years jail is now reduced to **two (2)** years imprisonment.

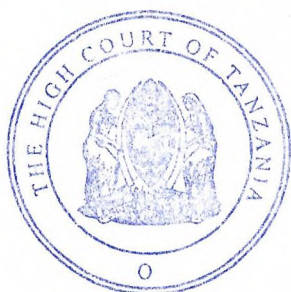
Basing on the foregoing reasons, the offender, **Aman Alphayo @ Mbise** is sentenced to **two (2)** years imprisonment commencing from when he was placed in police custody that is on the 1st January 2021.

Order accordingly.

DATED at ARUSHA this 25th May, 2022


M. R. GWAE,
JUDGE
25/05/2022

Court: Right of appeal to the Court of Appeal of Tanzania fully explained to the parties in of the imposed sentence only.




M. R. GWAE,
JUDGE
25/05/2022