

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA

CRIMINAL SESSION CASE NO 10 OF 2022

(PI Case No 6/2018 in the District Court of Newala at Newala)

THE REPUBLICPROSECUTOR

VERSUS

HAMISI LAUS LEMUACCUSED

RULING ON SENTENCE

13th February 2023

LALTAIKA, J.

The accused person before me **HAMISI LAUS LEMU** hitherto charged with the offence of Murder contrary to section 96 of the Penal Code Cap 16 RE 2002 (now RE 2022) has on this **13th day of February 2023** pleaded guilty to the lesser offence of Manslaughter contrary to section 195 of the Penal Code Cap 16 RE 2022. The accused has been in remand custody pending this trial since 2018 on allegations that on 5/5/2018 at Nambudi



Village in Newala District Mtwara he willfully and unlawfully killed one **Mohamed Majali Kujaliwa** (herein after "the deceased").

Criminologists have argued that leading causes of homicide are; money and property, drug and alcohol, sexual motives, provocation, self-defense, religious and cultural causes, psychiatric, psychological, animosity, and jealousy, among other factors. The cause of this particular homicide, in my opinion is money and property. The following summary of the facts read out loud by the learned State Attorney Mr. Gideon Magesa which facts have unreservedly been accepted by the accused can substantiate.

On the fateful day the accused and his gang currently at large conspired to steal money from one Mohamed Majali Kujaliwa. In the night hours, they proceeded to the deceased house, successfully stole the money therein and on their way out, the accused met the deceased. Contrary to his expectation, the accused was met with a strong resistance by the deceased, a 60-year-old man "babu" who was armed with a machete *panga*.

The duo was engaged in a fight whereupon the accused sustained some notable injuries on the head and face. The accused however, perhaps due to old age, overpowered the deceased, and strangled him to death. Thereafter, the accused and his gang disappeared with the money.

As if by a miraculously, the accused ended up going to Mtwara Central Police Station on his own accord. Apparently, he badly needed treatment for his wounds. Due to the nature of the wounds, there was no way he could walk into any hospital in the country and receive treatment without a Police Form Number 3 (commonly referred to by its very popular acronym as PF3).

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He had no choice but to take a huge risk; knocking the doors of Mtwara Central Police Station to request for the PF3.

Upon arrival at Mtwara Central Police Station, the accused met **Detective *extraordinaire* G. 5316 Rajabu John Wambura**. Detective Wambura, on observing the nature of the wounds on the head and face of the accused, became highly suspicious. He decided to put the "voluntary visitor" under arrest, interrogated him and lo! and behold!, the accused confessed that he sustained the injuries during a fight at a robbery incident in Newala District.

Having completed the above preliminary steps, Detective *extraordinaire* Rajabu John Wambura referred the accused to the then Acting OC-CID *Afande* **Peter Kifigongo** who conducted further inquiry. The accused person reiterated the confession. He was searched and a total of **TZS 10,195,000** was found in his bag. Investigation commenced. The body of the deceased was taken to Newala District Hospital for examination where the cause of the death was described as blunt chest and abdominal injury leading to bleeding from the mouth.

In the house of the deceased, some items were collected and taken to the Chief Government Chemist along with samples from the accused person for purposes of DNA Profiling test. In the DNA lab, the same were tested and it was discovered that the blood clots found in the machete (*panga*), trousers and curtains matched with the sample swab taken from the accused person.

The above facts are essential not only in unpacking the nature of the homicide at hand but also in assisting me in the sentencing process which is

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the crux of this ruling. In the case of **Bernard Kapojosye v. R.** Crim. App. No. 411 of 2013 (unreported) the Highest Court in our jurisdiction had the following to say on the balancing exercise needed by a sentencing Court:

"We must point out that, sentiments aside, sentencing has a crucial role to play in the criminal justice system. In sentencing, the court has to balance between aggravating factors, which tend towards increasing the sentence awardable, and mitigating factors, which tend towards exercising leniency. The sentencing court should also balance the particular circumstances of the accused person before it and the society in which the law operates."

Before going back to the balancing exercise and the consequent sentence, I am inclined to point out that circumstances leading to the arrest of the accused warrant commendation to the Tanzania Police Force in general and **Detective *extraordinaire* G. 5316 Rajabu John Wambura** in particular. Police officers rarely receive accolades from the bench. However, in my opinion, the matter at hand deservedly falls squarely under that rare basket. This superb example of believing in one's guts should be emulated by the rest of our police officers.

It is not in doubt that the accused caused the death of the deceased. His unwavering confession leading to pleading guilty to the lesser offence of manslaughter is supported by the Postmortem Examination Report and the DNA Profiling Report. Nevertheless, it is instructive to state albeit in passing that modern substantive criminal law theorists call for distinction between "killing" and "causing death." See generally Fletcher, G. ***Rethinking Criminal Law*** (Oxford University Press 2000) and Moore, M. ***Causation and Responsibility: An Essay in Law, Morals and Metaphysics***

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(Oxford University Press 2009). In the words of Lord Birmingham in **Kennedy (No.2) [2008] 1. A.C. 269** "causation is not a single, unvarying concept to be mechanically applied without regard to the context in which the question arises."

Philosophical (or more specifically metaphysical) questions apart, the deceased, 60-years old as per the autopsy report died as a result of strangling by the accused. Suffocating an old man to death is a very serious and cruel act. In a highly quoted commentary on the American case of **Stephenson v. the State** by G.C.T in (1933) 31 Mich. L.R. it was stated that:

*"As the seriousness of the defendants act increases, not only in the danger to life which it creates but also in the viciousness of the intent with which it is committed, **the legal eye follows its consequences farther and father.**" (emphasis added)*

It is instructive to note further that the **thin-skull rule** also known as the **eggshell rule** would apply to reinforce liability of the accused. This principle provides that an accused is fully responsible for consequences of his or her actions even if the victim was particularly vulnerable such that an ordinary person would not have suffered such severe consequences. A person below the age of 60 would probably have survived the assault and strangulation by the accused but this does not, in any way apply in favour of the accused. See **R v Hayward** (1908) 21 Cox 692, **R v Holland** (1841) 2 Mood. & R. 351, **R v Blaue** [1975] 1 WLR 1411.

This brings me back to the sentencing exercise I am inclined to undertake. While the mandatory sentence for murder is death by hanging,

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the maximum sentence for manslaughter is life **imprisonment**. The court may, however, reduce the sentence depending on peculiar circumstances of a given case. The Tanzania Sentencing Manual for Judicial Officers and case law of the Apex Court can be interpreted to provide for an imprisonment term ranging from 10 to 15 years. See **Moses Mungasian Laizer @Chichi** [1994] T.L.R. 223 and **Richard Venance Tarimo v. Republic** [1993] T.L.R.142 among other authorities. It would be appropriate in this case to count from the fifteen years downwards.

Taking into consideration aggravating and mitigating factors submitted by the learned **State Attorney Gideon Magesa** and the learned **Defence Counsel Hussein Mtembwa** respectively, I am inclined to reduce, from the 15 years count, the six years spent in remand custody pending this trial.

All said and done, I hereby sentence **HAMISI LAUS LEMU** to a jail term of 9 (nine) years. Further, I order that exhibit P8 (Tanzanian Shillings ten million one hundred and ninety-five thousand only **1,0195,000**) be handed over, with immediate effect, to **SALUM ALLY MITEDI** the appointed administrator of the estate of the deceased who has also attended these proceedings.

It is so ordered.



E.I. LALTAIKA

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Court:

Ruling delivered on this 13th day of February 2023 in the presence of Mr. Gideon Magesa, State Attorney, Mr. Hussein Mtembwa, Counsel for the defence and the accused person.



E.I. LALTAIKA

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JUDGE

13.02.2023

Court:

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



E.I. LALTAIKA

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JUDGE

13.02.2023

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