

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

CRIMINAL SESSION CASE NO 2 OF 2022

(From PI Case No 5/2020 in the District Court of Liwale at Liwale)

THE REPUBLICPROSECUTOR

VERSUS

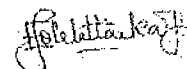
AIDO HAJI MTUNAGEACCUSED

RULING ON SENTENCE

27th March 2023

LALTAIKA, J.

The accused person herein **AIDO HAJI MTUNAGE** 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 **27th day of March 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 November 2020 on allegations that on 15/11/2020 at Manyakula Village in Liwale District, Lindi Region he willfully and unlawfully killed one **Sadiki Saidi Mkobokola** (herein after "the deceased").



The facts read out loud in court by **Ms. Kija Elias Luzungana**, learned State Attorney can be summarized as follows. On the 15th day of November 2020, the accused and another ALLY KOSI currently at large went to drink local brew at a village *Kilabu* (bar) known as Mama Mariamu's place. The deceased was with them. In the course of drinking, the accused's phone was stolen. A search was conducted whereupon it was found in one of the pockets of the deceased's robe (*kanzu*).

The accused took law in his own hands and started beating up the deceased on various parts of the body. He took petrol and poured on the deceased and set him on fire. This led to severe burnt injuries. The deceased was rushed to St. Warburg Hospital in Nyangao for treatment, but he died on 20/11/2020. Postmortem examination conducted by one **Dr. Martin Mtomo** revealed that the deceased's death was due to *hypothermic shock* and third-degree burns. The accused accepted the facts and was convicted for manslaughter on his own plea of guilty.

No sooner had the court entered conviction than **Ms. Kija Elias Luzungana**, learned State Attorney and **Mr. Ali Mkali**, learned defence counsel submitted on aggravating and mitigating factors respectively. The importance of such an exercise for sentencing purposes cannot be overemphasized. In **Bernard Kapojosye v. R.** Criminal Appeal No. 411 of 2013 (unreported) the Court of Appeal of Tanzania had this to say:

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

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circumstances of the accused person before it and the society in which the law operates." (Emphasis Mine)

It was Ms. Luzungana's submission that the convict had acted with so much cruelty in torching the deceased. The learned State Attorney opined that since the phone alleged to have been stolen was already found, there was no need for the convict to use so much force. She elaborated that the convict had poured petrol on the deceased and set him ablaze. Ms. Luzungana reminded this court that **section 198 of Penal Code** provides for **life imprisonment** for the offence of manslaughter.

Mr. Ali Mkali, the learned defence counsel on his part, pleaded with this court to show leniency to his client. The learned Advocate strongly argued that the convict was remorseful. He submitted that his client had pleaded guilty to the lesser offence of manslaughter thus sparing the government with full trial costs. Finally, Mr. Mkali invited this court to consider that the convict had been in remand custody for almost three years.

This brings me back to the sentencing exercise I am inclined to undertake. While the mandatory sentence for murder is death by hanging, the maximum sentence for manslaughter is life **imprisonment**. Since the convict had pleaded guilty, this court can no longer offer the maximum sentence of life imprisonment as suggested by the learned State Attorney.

Apparently, the convict is entitled to a “discount” as per sentencing tradition in commonwealth jurisdictions. Professor Andrew Ashworth **Sentencing and Criminal Justice** (Cambridge University Press: 2005) p. 152 offers some insights on this practice:

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"There has been some debate in England about the implication of sentencing "discount" for pleading guilty: clearly, a person who pleads not guilty and is convicted cannot receive this discount, and so the sentence will be higher than for someone who pleaded guilty to a similar offence. But does that mean the pleading not guilty and putting the prosecution to proof is an aggravating factor? Pleading not guilty certainly has a potential cost that pleading guilty does not have; but in principle the person who is convicted after a not guilty plea should receive the normal sentence, not aggravated sentence."

In the instant matter the "normal sentence" is life imprisonment. However, I am alive to the practice of the Court of Appeal of Tanzania (CAT) of imposing an imprisonment term of ten (10) to fifteen (15) years in substituting a death sentence with that of manslaughter. (See **Moses Mungasian Laizer @Chichi** [1994] T.L.R. 223 and **Richard Venance Tarimo v. Republic** [1993] T.L.R.142 among other authorities.)

The convict's act of using petrol to set the deceased ablaze is deplorable. It is especially regrettable that the act was done in a village setting. Unlike big towns and cities where victims may not be known to perpetrators, villagers are known for tolerance and brotherly bond. I have also taken into consideration the fact that Tanzanians are law abiding. Our law enforcement agencies work tirelessly day and night to ensure that criminality does not reign. As argued by Ms. Luzungana, the convict took law to his own hands. In the same line of reasoning, I have considered the mitigating factor pleaded by the convict through his counsel that he has been in remand custody for almost three years.

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Taking into consideration aggravating and mitigating factors submitted by the learned **State Attorney Ms. Luzungana** and the learned **Defence Counsel Mr. Mkali** respectively, I am inclined to reduce, from the 15 years count, the three years spent in remand custody pending this trial.

All said and done, I hereby sentence **ADO HAJI MTUNAGE** to a jail term of 12 (twelve) years.

It is so ordered.



E.I. LALTAIKA

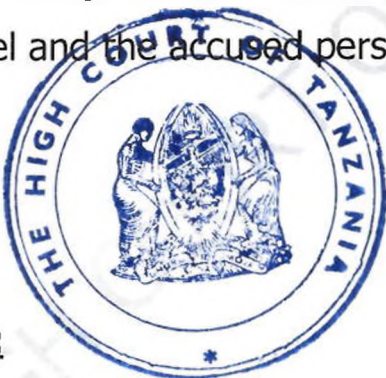
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JUDGE

27.03.2023

Court:

Ruling delivered on this 27th day of March 2023 in the presence of Ms. Kija Elias Luzungana, Learned State Attorney, Mr. Ali Mkali, Learned Defence Counsel and the accused person.



E.I. LALTAIKA

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JUDGE

27.03.2023

Court:

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



E.I. LALTAIKA

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JUDGE

27.03.2023

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