

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**(MTWARA DISTRICT REGISTRY)**  
**AT MTWARA**  
**[ORIGINAL JURISDICTION]**

**CRIMINAL SESSION 15 OF 2022**

*(P.I. Case No 3 of 2021 in the District Court of Nachingwea at Ruangwa)*

**THE REPUBLIC.....PROSECUTOR**

***VERSUS***

**ABILAH OMARY JUMA..... ACCUSED**

**RULING ON SENTENCE**

*31/3/2023 & 3/4/2023*

**LALTAIKA, J.:**

The accused (now convict) **ABILAH OMARY JUMA** and the deceased **STEFANIA WILBERT CHIMII** were next door neighbours. They lived in Lionja Village, Nachingwea District, Lindi peacefully other neighbours anywhere until the fateful day as will be highlighted soon.

It is the prosecution's story that on 3/8/2021 the deceased, an old lady described as "Bibi" visited the accused in his home place in Lionja B village, asking for drinking water. There arose an exchange of jokes (utani) the accused tried to chase away the deceased from his home place. However, the deceased was not willing to leave. The accused started to push her while

*Laltaika*

beating her up. She fell down and lost her tooth. She sustained injuries on her head. As she was rushed to Lionja dispensary, her condition worsened, and she passed away on the same day 3/8/2021.

The process of investigation commenced, and it was established that the accused was responsible for the death of the deceased. He was immediately arrested and charged with Manslaughter. He consistently confessed and when he appeared in this court for trial, he pleaded guilty hence this sentence.

It is noteworthy that the state had provided legal assistance to the accused though **Mr. Ali Kassian Mkali, learned Advocate**. This means, among other things, that the plea of guilty was based on sound legal advice (See **Adan v. R.** [1973] EA 445). The Republic, on the other hand, had entrusted prosecutorial function to **Ms. Kija Elias Luzungana, learned State Attorney**.

No sooner had this court entered conviction than the learned State Attorney and the learned Defence Counsel submitted on **aggravating** and **mitigating** factors respectively. **Ms. Luzungana** stated that the charge brought against the accused was on loss of life of a human being. To that end, reasoned the learned State Attorney, section 198 of the Penal Code is unambiguous that the offence [of manslaughter] is punishable by Life imprisonment.

Ms. Luzungana insisted that such a punishment was deserving since the convict had no reason to flex his muscles against a woman. She insisted that the convict had ended life of a person who had a family. Since this court



is expected to guide the whole community on morality and abiding to the rule of law, argued the learned State Attorney, a stiff sentence was warranted- to remind members of the community to always have their emotions checked, under control.

Mr. Mkali, the learned Defence Counsel, on his part, started by elaborating that the "joke" in the facts narrated by his learned colleague was not a joke on the side of his client because it offended his culture. He expounded that there was a traditional initiation "jando" of his client's son. The local custom required that the place where the jando took place, narrated the learned counsel as if he was an anthropology major at an Ivy league, be kept out of any disturbance.

Mr. Mkali went on to state that the joke was on unearthing parts of cultural items that were kept underground provoking his client. The learned defence counsel insisted that the deceased was an elderly woman a "bibi kizee" and that his client was a first offender. He prayed for lenience on behalf of his client.

I have considered both aggravating and mitigating factors. Two issues stand out that cannot escape my commentary. The first is that witchcraft motivated killings should not be sugarcoated as pride in one's culture. This court cannot condone cultural practices that do not respect human life.

The second issue is on frequent reference of the deceased as "bibi kizee" as if that makes her life less important. Life is precious-be it that of a child, youngster or an elderly person. It is instructive to that even if a younger person would not have died from the "push" directed to the



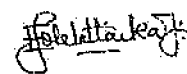
deceased senior citizen, the **thin-skull rule** also known as the **eggshell rule** would apply to reinforce liability of the accused.

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 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.

Guided by the Tanzania Sentencing Manual (see p. 55), it is my considered view that the offence is High Level Manslaughter. It is a high-level manifestation of Violence Against Women (VAW). Borrowing from The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the National Plan of Action to End Violence Against Women and Children (NPA-VAWC) of Tanzania (2017-2022) defines violence against women as:

*"All acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflict or war."*

Tanzania is committed to not only to protection of the right to life but also promoting respect for women. The convict had acted with cruelty in fatally hitting his wife on the head. The starting point as recommended in



the Sentencing Manual is 10 years. The Sentence Range is life imprisonment to 10 years. I would start the count at 10. Nevertheless, as pleaded by the learned defence counsel, I proceed to reduce the 3 years already spent in remand custody.

In the upshot, I hereby sentence **ABILAH OMARY JUMA MASUDI** to a seven (7) years' imprisonment term.

It is so ordered.



**E.I. LALTAIKA**

Handwritten signature of E.I. Laltaika in blue ink.

**JUDGE**

**03/04/2023**

**Court:**

This ruling is delivered under my hand and the seal of this court on this 3<sup>rd</sup> day of April 2023 in the presence of Ms. Kija Elias Luzungana, learned State Attorney, Mr. Ali Kassian Mkali, learned defence counsel and the convict.

**E.I. LALTAIKA**

Handwritten signature of E.I. Laltaika in blue ink.

**JUDGE**

**3/4/2023**

**Court**

The right to appeal to the Court of Appeal of Tanzania fully explained.

**E.I. LALTAIKA**

Handwritten signature of E.I. Laltaika in blue ink.

**JUDGE**

**3/4/2023**



Handwritten signature of E.I. Laltaika in blue ink.