

IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)

SITTING AT MPANDA

CRIMINAL SESSIONS CASE NO. 09 OF 2023

REPUBLIC

VERSUS

NJILE S/O LUKAJA MALUBA.....ACCUSED

JUDGMENT

30th May, 2023 & 1st June, 2023

A.A. MRISHA, J.

The accused **Njile s/o Lukaja Maluba** who stands charged with an offence of Manslaughter contrary to section 195 of the Penal Code, CAP 16 R.E. 2022 was arraigned before this court on the allegations that on 15.10.2022 at Katobo B Village within Tanganyika District in Katavi Region the said accused person caused the death of **Hangi s/o Mkingwa**.

When the charge sheet was read over to him in Kiswahili language which he clearly understood, the accused person pleaded guilty to that lesser offence. According to the facts of the case the accused **Njile s/o**

Lukaja is 49 years old and a resident of Katobo Village within Tanganyika District in Katavi Region.

That the incident in relation to the death of the deceased person took place on 15.10.2022 at Katobo Village within Tanganyika in Katavi Region and that before the incident the accused had sexual relationship with one Seda s/o Kanuda and they were blessed with two issues but they later got separated.

That on 15.10.2022 at around 1600 hours the deceased went to Katobo Village Centre where he visited the residence of one **Sina d/o Kanuda** and **Seka d/o Kanuda** where they sell Traditional liquor commonly known as "pombe ya komoni".

That soon thereafter the deceased found one **Sai s/o Mgema@Masala** at the local brew and started to drink together, while sitting with **Seka d/o Kanuda** and that on the material date, the accused person arrived at the local brew and found the deceased drinking traditional liquor (pombe ya kombe) with **Seka d/o Kanuda**.

The accused was unhappy with the situation thus he took the handle of a spade and hit the deceased on his head then he run away leaving the deceased lying down bleeding and helpless and unconscious. The incident was witnessed by **Sina** and **Seka Kanuda** who then reported it

to the Village Chairman one **Kiduta s/o Bongati Sayi** who helped the deceased by taking him to the Police Station where he was issued with a PF3 for medical examination.

That on 16.10.2022 the deceased was interviewed by a **Police Officer J.688 Ludwick**, on his statement he mentioned the accused as the one who caused him grievous body harm and on the same material day the deceased was taken to Ifukutwa Dispensary where he was treated by one **Geoffrey s/o Chundu George** who revealed that the deceased head injury was caused by being hit with a blunt object, and the said filled and signed the PF3.

That on 23.10.2022 at around 1000 hours the accused person was arrested and matched off to the Tanganyika Police Station where he was interrogated by a Police Officer **F.9073 D/Cpl Rahimu** by way of Caution Statement and through his caution statement the accused person admitted the offence of causing grievous bodily harm to the deceased person, and on 27.10.2022 the accused person was arraigned before the court for the offence of grievous harm; later it was reported that the deceased lost his life.

That on the same date the Police Officer with Force Number F 6702 D/Cpl Japhet reached at the scene of crime and drew a sketch map while being assisted by one **Kiduta s/o Bongati Sayi**.

On the same material date, the deceased body was conveyed to the Katavi Referral Hospital for medical examination whereby on 28.10.2022 the Autopsy on the deceased body was conducted by **Dr. Himrey s/o Msigwa** and it was revealed that the deceased death was caused by respiratory failure and brain suffocation. Soon thereafter the accused person was informed on the demise of the deceased person.

That the accused was interrogated by a Police Officer **F.9073 D/Cpl Rahimu** by way of caution statement for causing death of the deceased and he owed up. When availed with an opportunity to comment on the alleged facts, the accused confirmed that the facts were correct and true.

Subsequent thereafter the prosecution requested the court to admit the deceased Dying Declaration, the PF3, Sketch map of the scene of crime and a Post-mortem examination Report as exhibits. The defence counsel raised no objection against such prayer. Hence this court granted it and proceeded to admit the said documents as exhibits P1, P2, P3 and P4 respectively.



A.A.Mrisha
Judge
30.05.2023

FINDINGS

The accused person **Njile s/o Lukaja @ Maluba** was arraigned before this court for the offence of Manslaughter contrary to section 195 and 198 of the Penal Code, CAP 16 R.E. 2022. The facts of the case are brief, that on the 15th Day of October, 2022 the accused person caused death of the deceased **Hangi s/o Mkingwa** after hitting the deceased on his head by using a handle of a spade.

The accused person has unequivocally admitted to the charge and furthermore he has admitted to the facts which constitutes the offence of Manslaughter which he stands charged. Consequently, this court finds the accused guilty and accordingly convicts him for an offence of Manslaughter as charged.



A.A.Mrisha
Judge
30.05.2023

Aggravating factors:

Ms.Christina Moses, Learned State Attorney,

We pray that the accused be given a stiff penalty because he has taken away the life of the deceased person, also the deceased was a father of five children who depended on him and the incident of murder has infringed the said children's right to be taken care by their father. But also, after assaulting the deceased the accused run away leaving the deceased helpless and bleeding and the accused did not surrender himself until when apprehended. We also submit that there is a need to pass a severe sentence to the accused person so that it becomes a lesson to him and the society; people should not take law at hands but follow the proper forum in solving the problems.

Mitigating factors:

Mr. Eliud Ngao, Learned Advocate,

I pray the court not to pass a severe sentence to my client because **first** he has pleaded guilty to the offence meaning he has not disturbed the court, **secondly**, he has repented his guiltiness for the period of six months he has spent in remand custody, **thirdly**, it is his first time to commit an offence and **fourthly** the accused did not intend to commit the offence he was charged with. **Fifthly**, considering his age the accused is supposed to be a good ambassador to teach the people in the society not to take law at hands.

ORDER

Sentence reserved until 01.06.2023.



A.A. Mrisha
Judge
30.05.2023

SENTENCE

1st June, 2023

A.A. MRISHA, J.

The prosecution has implored me to impose a stiff penalty to the accused **Njile s/o Lukaja Maluba** who has been convicted on his own plea of guilty in respect of an offence of Manslaughter contrary to section 195 of Penal Code.

The reasons advanced by the prosecution Republic in bringing such prayer is that though there are no previous criminal records, the accused has taken away the life of the deceased person who was depended by his family and that after assaulting the deceased, the accused run away leaving the deceased bleeding and helpless. Another reason is that the accused did not surrender himself to the law enforcement agents until when he was arrested.

On the other side, the accused through his counsel, has requested this court not to inflict a stiff penalty against the accused person due to several reasons. The first reason is that by pleading guilty to the charge against him, the accused person has not disturbed the court, the second reason is that the accused has repented his guiltiness for the period of six months he has spent in prison remand. His third reason is that he is a first offender, and the fourth reason is that the accused did not intend to commit an offence. His last ground is that being an old man the accused will be a good ambassador to the society if given a lenient sentence.

On my part I have heard and considered all the aggravating and mitigating factors submitted by both parties including the fact that the accused person has spent six months in remand custody. In my view, those are among the key factors to be considered by the court in assessing a proper sentence to be meted against the accused who has been convicted of a criminal offence. They are also provided in the Tanzania Sentencing Manual for Judicial Officers.

I am alive of the rule that each case has to be treated per its own circumstances. Having all the above in mind, and considering the circumstance of this case, I am of the considered view that the accused


person in this case deserves to be treated leniently. This is because he is a first offender, he has pleaded guilty to the charge meaning that he has served the time of the court and the prosecution Republic.

However, although I have intimated that the accused deserves lenience of the court, I have considered the circumstances leading to the commission of the offence and observed that the accused could have used other means of settling dispute with the deceased person instead of hitting him with a spade handle. It is due to the reasons advanced above that I think that a sentence of three years (3) in custody against the accused person is suitable to meet the ends of justice. Hence, I sentence him accordingly.


A.A.Mrisha
Judge
01.06.2023

Dated at Mpanda this 1st Day of June, 2023.




A.A.Mrisha
Judge
01.06.2023