

**IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)**

SITTING AT MPANDA

CRIMINAL SESSIONS CASE NO. 10 OF 2023

(Arising from P.I Case No. 23 of 2022)

REPUBLIC

VERSUS

RAMSA S/O CHEYO @ MACHIBYA.....ACCUSED

30th May, 2023 & 1st June, 2023

JUDGMENT

A.A. MRISHA, J.

The accused person one **Ramsa s/o Cheyo@ Machibya** stands charged with an offence of Manslaughter contrary to section 195 and 198 of the Penal Code, Cap 16 R.E. 2022. It was alleged by the prosecution Republic as per the laid information, that on 19.08.2022 at Manyanya area, Kasekese Village, Sibwesa and within Tanganyika District in Katavi Region the accused **Ramsa s/o Cheyo@ Machibya** caused the death of one **Massanja s/o Habai**.

The accused pleaded guilty to the said charged lesser offence after the charge was read over and clearly explained to him in Kiswahili language which he understood. Then this court entered a plea of guilty in respect of that offence whereafter Mr. Abdon Bundala who represented the prosecution Republic, read the facts of the case at hand.

The same can briefly be narrated as follows:

That the offence to which the accused person stands charged was committed on the 19th day of August, 2022 at Manyanya area, Kasekese Village, Sibwesa ward within Tanganyika District in Katavi Region. That the deceased name is **Masanja s/o Habai** and that on the fateful date at about 2100 hours the accused went to Manyanya center at the shop of **Benjamin s/o Samwel** and bought two beers whereafter he started drinking.

That at the said shop the accused met with the deceased and other villagers who were **Kija s/o Mwaje, Banza s/o Kela Ligu, Kabula s/o Kazungu** and **Sinda s/o Ligu** who were also drinking. That while drinking, the deceased bought two bottles of beer for the accused person. Thereafter, the deceased demanded a bottle of beer from the

accused who contended to have no money for buying extra beers for the that day.

That being unhappy with the accused's response, the deceased decided to take a bottle of beer from the accused and poured it down. The accused being uncomfortable with the situation, decided to leave the area but the deceased pulled his shirt and slapped him; that is when they started fighting. In the course of fighting, the accused hit the deceased's back head and at the neck with an empty bottle of beer.

That the deceased laid down unconscious and was severely bleeding on the head but the accused left him helpless and that the shop owner screamed for help and the Village Chairperson on **Marco s/o Kazimili** responded and arrived at the scene of crime whereby the deceased person was taken to Kasekese Health Centre for treatment but he lost his life before being treated.

That the incidence was reported to Kasekese Police Post and later on to Tanganyika Police Station and on 20th day of August, 2023 the accused person was arrested and conveyed to Tanganyika Police Station. That while at the said Police Station the accused person was interrogated by a Police Officer with Force Number **F.4373 D/Cpl James** by way of

caution statement and he admitted to have caused the death of the deceased person.

That on 20th day of August, 2023 the Police Officers went at the scene of crime and one **G. 8430 D/Cpl Emmanuel** drew the sketch map of the crime scene. That the autopsy was conducted on the deceased person's body by one **Dr. Mussa s/o Angelo Kachele** whereby it was revealed that the death of caused by **Cardiac arrest Secondary to Hemorrhagic shock 2nd degree** which was due to major cut wounds.

That on the 2nd day of September, 2022 the accused person was brought before the Justice of Peace one **Suzana d/o Gregory Matemu** and confessed to have committed the crime. After the facts were read out to him, the accused confirmed before this court that the same are correct and true.

Thereafter the prosecution implored this court to admit four documents namely Post-mortem Examination Report, the accused Caution statement, the Sketch map of the crime scene as well as the Extra Judicial Statement as exhibits and finally the court granted such prayer and marked the said documents as exhibits P1, P2, P3 and P4 respectively as there was not objection from the defence side



A.A.Mrisha
Judge
30.05.2023

FINDINGS

The accused person **Ramsa s/o Cheyo@ Machibya** 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 briefly that on the 19th day of August, 2022 the accused caused death of the deceased on **Masanja s/o Habai** in the course of fighting while they were drinking beer.

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



A.A.Mrisha
Judge
30.05.2023

Aggravating Factors:

Mr. Abdon Bundala, Learned State Attorney,

Your Honour, we have no previous criminal records. However, we pray that the accused be given a stiff penalty due to the following reasons.

First, by causing death of the deceased the accused has made the Nation to lose a labour force. **Second**, the accused did not take steps to help the deceased just after assaulting him; had he taken such measures the deceased's life could have been served. We, therefore pray a stiff penalty to be passed so as to be a lesson to the accused as well as the society.

Mitigating Factors:

Ms. Helen Haule, Learned Advocate

We pray that the accused person should not be given a stiff penalty due to the fact that he is a first offender, also the accused person has shown cooperation to the Court, the Prosecution and the Police Force by pleading guilty to the offence; hence he has served time of the court. We also pray that the accused be treated leniently because he committed the offence in the state of drunkenness and was provoked meaning that he committed the offence out of his control. Also, the

accused has a big family of ten children and his wife has an infant child and is taking care of the accused's grandchildren and brother's children.

Also, the accused has health problem as he is positive and is suffering a backbone injury. It is due to such reasons we pray that he be given a lenient sentence so that he can go back to take care of his family and attend some treatments regarding his health problems as we have endeavoured to explain. Upon being examined by court the accused has informed this court that before being granted bail he stayed in prison remand for two months and two weeks.



A.A.Mrisha
Judge
30.05.2023

ORDER

The sentence for the above convict is reserved until 01.06.2023.



A.A.Mrisha
Judge
30.05.2023

SENTENCE

1st June, 2023

A.A. MRISHA, J.

The accused in this case was convicted on his own plea of guilty that he committed the offence of Manslaughter contrary to section 195 of the Penal Code, CAP 16 R.E. 2022. He was convicted for causing death of the deceased person one **Massanja s/o Habai**.

Having so convicted the accused person, my task was to assess a proper sentence to be imposed on the said accused person as per the law and the guidance provided under the ***Tanzania Sentencing Manual for Judicial Officers*** which sets three levels of sentencing for the offence of Manslaughter.

In submitting in relation to the aggravating factors the prosecution side stated that it has no previous criminal records regarding the accused person but they prayed for a stiff penalty to be imposed on the accused person on the ground that by causing death of the deceased the accused has made the Nation to lose labour force and that after assaulting the deceased the accused did not take steps to help the deceased; this led to the death of the deceased.

To the defence side, their prayer was that the accused person be treated leniently because he has shown good cooperation by pleading guilty to the offence he stood charged, hence served time of the court and costs to the government. Also, that the accused was in state of drunkenness and was provoked by the deceased and he is an old person who is positive and is suffering from the backbone pains.

Another reason from that adverse side was the accused has a big family which comprise of his wife and ten children who depends on him. I have taken all the aggravating and mitigating factors as stated above. I have also considered the circumstances of this case which shows that the accused used a weapon which is an empty bottle of beer to assault the deceased and that he did so after being provoked by the deceased and he was drunkard.

In the circumstances, I find that the sentence to be meted on the accused falls under the first level. However, the there are exceptions which can make this court to reduce the sentence from the first level to the third which rangers from conditional discharge to 4 years in prison. The exceptions are that the accused is a first offender, he was drunkard and it was the deceased who provoked him; had the deceased not do so

the presumably the accused could not have hit the deceased with an empty bottle of beer leading to his death.

Another exception is due to the fact that the accused has pleaded guilty and served time of the court and cost to the government; this factor entitles the court to reduce his sentence. Further to that, it is undisputed that the accused is an old man who is positive and has backbone pains.

Therefore, basing on the above reasons, I discharge the accused on the condition that within a period of twelve (12) months from the date of this sentence pronouncement he should not commit any criminal offence and be of good behaviour and keep peace in the society.

It is so ordered.




A.A. Mrisha
Judge
01.06.2023