

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

CRIMINAL SESSION NO. 93 OF 2022

REPUBLIC

VERSUS

- 1. PRISCUS DANIEL MWACHA @ PRINCE DANIEL MWACHA**
- 2. DEOGRATIUS THOMAS MWACHA**
- 3. LINUS BALTAZAR MWACHA**
- 4. EUSEB PETER MWACHA**

RULING ON SENTENCE

29th May & 1st June, 2023

A.P.KILIMI, J.:

Priscus Daniel Mwacha @ Prince Daniel Mwacha, Deogratius Thomas Mwacha, Linus Baltazar Mwacha and Euseb Peter Mwacha hereinafter, hereinafter first, second and third accused persons respectively were brought before me charged for the offence of prayed to plea the lesser offence of manslaughter. The learned State Attorney for the Republic led by Mr. Peter Utafu assisted by Ms. Edithi Msenga did not object that offer.

When they were arraigned to a new charge and later facts read to them, they all pleaded guilty to the offence of Manslaughter c/s 195 and 198 of the Code (supra). Consequently, this court has nothing but proceeded to convict them basing on their own plea of guilty. The Sentence was reserved, and today all accused persons have appeared before me for this ruling on sentence.

The facts of this case gleaned from the assertions by the Republic were to the effect that, on 6/10/2021 at Dakani Kibosho, Moshi District in Kilimanjaro, all accused persons assaulted one FELIX JOHN NYAKU (deceased) using sticks after they suspected him of stealing a weigh scale of one Daniel Thadei Mwacha. The facts further reveals that the deceased was apprehended by the 1st accused, a village chairman, who was accompanied by the 2nd, 3rd and 4th accused. They tied up the deceased and started to assault him with sticks while asking him to surrender the weigh scale. They took him to his home, searched for the weight scale but it was nowhere to be seen. They later took him at Local Pombe Shop at Dakau, they insisted him to show the scale, when it reached night, the accused persons left the deceased there at Pombe shop, aiming next day to send him at Police Station.

On the next day morning, villagers reside at Dakau found the body of deceased already dead, they reported the matter at Moshi Central Police Station, then Police went to the scene of the crime and took the deceased body to Mawenzi Hospital, thereat, the deceased body was examined. The doctor identified that the cause of death is cardinal respiratory failure. The accused persons were arrested on different times and sent to Moshi Central.

Upon being convicted for the above offence, the prosecution side had no previous conviction, further Ms. Edith Msenga learned state attorney prayed for sentence of Manslaughter appropriate, she insisted that accused persons used extra force for their claim of right while the deceased was unarmed, she further said, the said accused took the duty of the court to punish the deceased. The law is there for protection of property and citizen need to be obeyed, when are broken the wrong doors need to be punished according to the law. Also, she added that one of the accused is a young person, so prayed the court be directed by the law of child Cap 13 R.E. 2019 and its rules.

Whereas, in mitigation, both learned counsels for defence prayed lenient sentence on the ground which can be summarized herender; First; Both are first offenders, but they have confessed to commit the offence

charged. Second; They have stayed in prison as remand prisoners for almost one year and six months. Therefore, they have learned a lot and regret the offence they committed. Third; all accused persons showed that they were having no intention to kill, since they did not run but cooperate with police in this matter. Fourth; Both have got family depend on them, but they still have energy to work for their family and nation at large. And fifth; their plea of guilty have saved court time and costs.

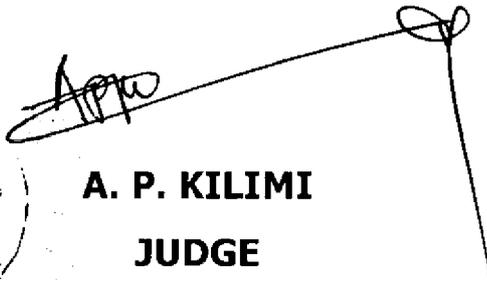
In respect to the third accused person Linus Baltazar Mwacha who is aged 16 years, his defence counsel mitigated that being a the first offender and as per age is a child, then the court should take regard that he has pleaded guilty which show he regrets for this offence, and for period of one year and seven months stayed under custody, he has learn a lot. The counsel further said, the cause was due to many people, and his participation was very minimal, so prayed for lenient sentence and the period he has stayed in remand be deducted. Moreover, Mr. Japhet John Ndege, Social Welfare Officer also appeared for third Accused Person and prayed the court consider age, therefore punishment to be given be of none custodial sentence, in order not to disturb his progress as a young child.

I have taken into consideration the aggravating and mitigating factors of the learned counsels, according to Tanzania sentencing manual for judicial officers. The offence committed falls into Low Level Manslaughter. This is because they used unreasonable force actuated by mob justice, after alleging that deceased a thief. Therefore, according to the above circumstances, I am of the view 3 years as starting point meet the justice of this matter.

However, since all accused persons are first offenders, 6 months is reduced for each, second; the fact that they pleaded guilty 1/3 of 30 months remained is deducted then remained 20 months. Thereafter, I exclude the period spent in prison which is one (1) year and seven (7) months counted from the first date they were arraigned before the subordinate court. After this deduction only one month remain. In conclusion thereof, in terms of section 38(1) of the Penal Code Cap.16 R.E.2022 I the accused persons namely Priscus **Daniel Mwacha @ Prince Daniel Mwacha, Deogratius Thomas Mwacha, and Euseb Peter Mwacha** are discharged on the condition not to commit any criminal offence for a period of 12 months. While accused person **Linus Baltazar Mwacha** being a child is discharged absolutely.

It is so ordered.

DATED at **MOSHI** this 1st day of June, 2023.



A. P. KILIMI
JUDGE
1/06/2023

