

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(MOSHI DISTRICT REGISTRY)**

**AT MOSHI**

**CRIMINAL SESSION CASE NO. 91 OF 2022**

**REPUBLIC**

**VERSUS**

**MATHIUS DOMINIC TSHA .....1<sup>ST</sup> ACCUSED**

**ARISTIDES DOMINIC TSHA .....2<sup>ND</sup> ACCUSED**

**MARCEL DOMINIC TSHA .....3<sup>RD</sup> ACCUSED**

**RULING ON SENTENCE**

29<sup>th</sup> May & 1<sup>st</sup> June, 2023

**A.P.KILIMI, J.:**

Initially, the accused persons namely **Mathius Dominic Tsha, Aristides Dominic Tsha** and **Marcel Dominic Tsha** hereinafter first, second and third accused persons respectively were charged with the offence of Murder contrary to section 196 read together with section 197 of the Penal Code, Cap 16 Revised Edition, 2019. They pleaded not guilty to it but further through their learned counsels providing free legal representation, Mr. Yusuph Mwangazambili, Ms. Zuhura Twalibu and Mr. Fredrick Kimaro who

stood for first, second and third accused respectively, prayed to plea the lesser offence of manslaughter. The same was accepted by the Prosecution lead by Mr. Peter Utafu assisted by Ms. Edithi Msenga learned State Attorneys.

When arraigned to a new charge and later facts read to them, they pleaded guilty to the offence of Manslaughter c/s 195 and 198 of the Code (supra). Consequently, this court proceeded to convict them basing on their own plea of guilty. The Sentence was reserved. Today all accused persons have been brought to this court for delivery of this ruling on sentence.

The facts of the case alleged by Prosecution were simple and straight forward that; it was the night of 31/10/2021 at Keni village within Rombo District and Kilimanjaro Region. All accused persons being together returned to their home, they found the deceased Inyasi Aloyce Owiso coming out from their home cattle shed holding one goat, they asked him for permission to do so, he remained unanswered, upon alleging him to be a thief, they started beating the deceased on various part of his body using stick, while sending him to the Police Station having the said goat, finally, they succeeded to reach the central Police Station of Mashati Rombo. While Police officer doing

interrogation of the incident, by then the deceased who was very weak due to beating, he died there at the station.

Thereafter, all accused persons were put under arrest, taken their cautioned statement and confessed to beat with other angry people. The deceased was taken to Huruma Hospital for post mortem, the cause of deceased death was discovered to be Cerebral Hemorrhage due to Head injury.

Upon being convicted for the above offence, the prosecution side had no previous conviction, further but Mr. Utafu learned state attorney prayed for low level sentence of Manslaughter, insisting this is because all accused person used excessed force without any need to do, by beating the deceased on vulnerable parts like stomach and head, area which can cause easily death of the Human being. Also, prayed a sentence to be a warning to them and others, who engage in mob justice instead of abiding to law, which direct any criminal should be treated according to the law.

Whereas, both learned counsels for defence concurrently prayed lenient sentence on the following summary of mitigating factors; First; Both are first offenders, and regret to commit the offence, and the offence was

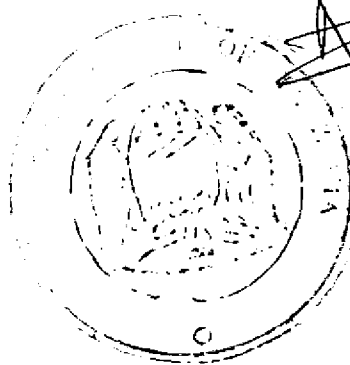
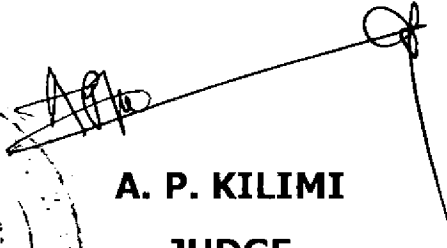
committed due to temper after he found deceased stilling the goat. Second; They have stayed in prison as remand prisoners for almost one year and six months. Therefore, they have learned a lot and regret the offence they committed. Third; their conduct after event, they did effort to send the accused at police station, this shows that they were having no intention to kill the deceased. Fourth; The circumstances culminated the commission of offence shows that they committed this offence without intention, this is shown that they used weapons in order to defend themselves, since the incident occurred in night and they could not know which weapon the deceased had. Fifth; Both have got family depend on them, but they still have energy to work for their family and nation at large. And sixth; their plea of guilty have saved court time and costs.

I have taken into consideration the aggravating and mitigating factors of the learned counsels, thus having considered Tanzania sentencing manual for Judicial officers. I am of considered view that the offence is Low Level Manslaughter. This is because the offence falls under use of unreasonable force in apprehending a person, despite the fact that the deceased was alleged to be a thief. Therefore, according to the above circumstances, I am of the view 4 years which the highest in this level will be the starting point.

Now, since all accused persons are first offenders, 6 months is reduced for each, second the fact that they pleaded guilty 1/3 of 42 months remained is reduced which is 14 months and remained 28 months. Then I exclude the period spent in prison which is one (1) year and six (6) months counted from the first date they were arraigned before the subordinate court. As per remaining period, I hereby sentenced each accused person to serve ten (10) months in prison.

Order accordingly.

**DATED** at **MOSHI** this 1<sup>st</sup> day of June, 2023.



**A. P. KILIMI**  
**JUDGE**  
**1/06/2023**