

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

CRIMINAL SESSION CASE NO 34 OF 2021

(Originating from P. I. Case No 7/2019 in the District Court of Newala at Newala)

THE REPUBLIC.....PROSECUTION

VERSUS

IDRISA BOMU BALTAZARI @KAUSHA ACCUSED

RULING ON SENTENCE

12 & 22 September 2023

LALTAIKA J.

The rule of law requires, among other things, living in tolerance. Everyone must respect other people's choices. Even where such choices appear 'unacceptable' no one has a right to take law in their own hands to enforce what they consider acceptable. This is especially true when it comes to parents making choices that appear unpleasant to their children. In this ruling on sentence, a thirty-three-year-old man took law in his own hands against his mother's choices to live with another man after she was widowed. He murdered his mother's lover in a rather childish fracas.

The accused herein **IDRISA BOMU BALTAZARI @ KAUSHA** was 30 years when he was arrested in connection to the matter at hand. He was a peasant and resident of Moneka Village, Newala District in Mtwara Region. The information for murder filed in this court is to the effect that on the 12/10/2019 at Moneka Village within Newala District in Mtwara Region, the accused did MURDER one **MANZI s/o VICENT YAMBAYAMBA**.

Undisputed facts from a copy of the MEMORANDUM OF AGREED FACTS generated during Preliminary Hearing and Plea Taking dated 3/5/2023 may be summarized as follows. The accused and the deceased knew each other very well as they were both members of the same village. The accused was son of one Salima Bakari Selemani, a widow, who was living in concubinage with the deceased. It appears that the accused was not pleased with such an arrangement. On the fateful day he went to his mother's place in the night hours "usiku wa manane." He opened the door only to find his stepfather fast asleep. His mother, however, was awake.

The accused demanded that he is given tobacco by the deceased. His mother responded that the deceased was asleep and there was no tobacco. The accused was enraged. He accused his mother of favouring [kumpendelea] the deceased. He started beating up his mother using his hands on several parts of her body. The mother tried to wake up the deceased but in vain as he had been drinking local brew in a village party the whole day and was intoxicated. Attempting to save her life, the mother ran away leaving the accused and the deceased inside the house.

It appears that a fight arose between the accused and the deceased albeit with the deceased half asleep and heavily intoxicated. In the course of the fight, the accused fatally hit the deceased with a hoe handle on his forehead. On seeing that the deceased had lost consciousness, the accused carried the deceased on his shoulders and threw him in a cashewnuts plantation. The body of the deceased was discovered leading to the arrest of the accused. On 15/10/2019 at 10:15 AM a police officer G3165 D/Const. Alawe drew a sketch map of the area under direction of the wife of the deceased. On the same day, one Dr. Ismail Ogha of Newala District Hospital conducted postmortem and stated that the death was due to *acute blood loss*.

When the matter was called on for trial on the 12th day of September 2023, the accused pleaded guilty to the lesser offence of manslaughter. It is noteworthy that the state had provided legal assistance to the accused though **Mr. Emanuel Ngongi, 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 Mr. **Wilbroad Ndunguru, learned Principal State Attorney** and Mr. **Edson Mwapili learned State Attorney**.

No sooner had this court entered conviction than the learned State Attorney and the learned Defence Counsel submitted on **mitigating and aggravating** factors respectively. The learned Defence Counsel Mr. Ngongi, on his part, prayed that his client be set free through outright acquittal as provided for under section 38(1) of the Penal Code Cap 16 RE 2022. Should

the court opt for a custodial sentence instead, Mr. Ngongi reasoned, his client deserved lenience.

Mr. Ngongi went on to assert that as a first offender his client deserved this court's mercy. The learned Defence Counsel submitted further that the convict had confessed commission of the offence all along and was deeply remorseful. Citing this courts case **OF REPUBLIC V. MAGRETH PHILEMON SINKAMBA CRIM. SESSION CASE NO 2 OF 2020** (Mambi J.) Mr. Ngongi forcefully pleaded for this court to consider the time spent by his client in custody awaiting this trial.

On aggravating factors, Mr. Mwapili reminded this court **that Article 14 of the Constitution of the United Republic of Tanzania of 1977** provides for the right to life and that no one has the right to take away such a right as done by the convict. He also asserted that homicide incidences were on the increase not only in Mtwara but other parts of Tanzania. To this end, he called upon this court to provide a stiff sentence that would send a message to the public on the need to abide by the tenets of the rule of law.

I have considered both aggravating and mitigating factors. There is no doubt that the accused person's act of attacking the deceased while half asleep, drunk, and helpless and heating him with a hoe handle on the forehead was gruesome and inhuman.

Guided by the Tanzania Sentencing Manual (see p. 38), it is my considered view that the offence is High Level Manslaughter. Had the matter gone through a contested trial with production of exhibits and other evidence, the accused would have, if found guilty, sentenced to life imprisonment. However, pleading guilty reduced the sentence substantially. 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 and end up there. Nevertheless, as pleaded by the learned defence counsel, I proceed to reduce the 3 years already spent in remand custody and 3 years for other factors as narrated herein above.

In the upshot, I hereby sentence **IDRISA BOMU BALTAZARI @KAUSHA** to a FOUR (4) years' imprisonment term.

It is so ordered.



A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

E.I. LALTAIKA
JUDGE
22/09/2023

Judgement delivered this 22nd day of September 2023 in the presence of Mr. Wilbroad Ndunguru Principal State Attorney, Mr. Justus Zegge, State Attorney, Mr. Issa Chiputula learned Defence Counsel and the Convict.



A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

E.I. LALTAIKA
JUDGE
22/09/2023

Court

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



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
22/09/2023**