

THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT

(MUSOMA SUB REGISTRY)

AT TARIME

CRIMINAL SESSIONS CASE No. 151 OF 2022

IN THE MATTER OF AN APPLICATION FOR COMMUNITY
SERVICE ORDER

[Made under section 3 (1) (a) Community Service Act
[Cap. 291 R.E. 2002]

1. NYANGIGE GIMONGE

2. MAKOPA MATIKO

3. MAGWI MTONGORI GISARE

4. SUKU MWITA MARWA



..... APPLICANTS

Versus

THE REPUBLIC RESPONDENT

RULING

21.10.2023 & 21.10.2023

Mtulya, J.:

Four persons, namely: **Mr. Nyangige Gimonge, Mr. Makoba Matiko, Mr. Magwi Mtongori Gisare, Mr. Suku Mwita Marwa** (the applicants) were brought in this court on 6th July 2023 for allegation of manslaughter of **Mr. Japhet John Japhet @ Dodo @ Wegesa** (the deceased), which is against the enactment in sections 195 and 198 of the **Penal Code [Cap 16. R.E. 2019]** (the Penal Code).

The complaint against the applicants was registered in **Criminal Sessions Case No. 151** (the case) and at the end of the

proceedings in the case, the applicants were found guilty to the offence and subsequently sentenced to serve two (2) years imprisonment. The applicants had appeared today in this court praying for an order to substitute their remaining custodial sentence in prison for community services at **Nyamwigula Dispensary within Tarime District in Mara Region** (the dispensary). The applicants submitted that they are persons of good character and have families back home which depend on them and that they have learnt a lot in prison custody.

The transference of the applicants from prison custody to the dispensary was favored **Mr. Davis Katesigwa**, learned State Attorney for the Republic, assisted by **Ms. Joyce Rwegalula**, Social Welfare Officer, from the **Probation and Community Services Department in Mara Region**. According to Mr. Katesigwa, the application meets the standards set in section 339A of the **Criminal Procedure Act [Cap. 20 R.E. 2019]** (the Act), whereas Ms. Rwegalula thinks that the applicants are covered under section 3 (1) (a) of the **Community Service Act [Cap. 291 R.E. 2002]** (the Community Services Act).

According to Ms. Rwegalula all necessary steps regarding status of the applicants on the subject were followed, including visitation at their home village Nyamwigula and found the

applicants are not threat to **Nyamwigula Villagers** and the communities at the village are readily welcoming them back at the village. In order to substantiate her submission, Ms. Rwegalula registered a **Prisoners Social Inquiry Reports** (the reports).


I have perused the reports prepared by Ms. Rwegalula and found a treatment plan and recommendations regarding the applicants. The treatment plan shows that the applicants shall report and perform unpaid public work at **Nyamwigula Dispensary** from 08:00 hours to 12:00 hours and will be regularly visited by a **Community Services Officer** for supervision and counselling purposes. Regarding recommendations, Ms. Rwegalula recorded that: *the accused persons may be granted non-custodial sentence under the Community Services Department for the remaining part of their sentence.* Concerning reasons in favor of the recommendations, Ms. Rwegalula recorded in the reports that: the applicants are not threat to the society, they have fixed abode, reliable sureties, families which depend on them and there are work placements at the dispensary.

I have perused the provision of section 339A of the Act, section 3 of the **Community Services Act**, and Regulation 18 (2) of the **Community Service Regulations, GN. No. 87 of 2004** (the Regulations) and considered the reports admitted in the present

application and noted that the instant move initiated by the applicants is within the ambits of the law and practice of this court. It will also save budgets of the Government in prison authorities and assist applicants' economic muscles in their economic activities, hence the application may not be declined by this court.

However, in order to cherish the order, the applicant must register at least one (1) reliable surety according to section 3(1) of the Community Service Act and section 399A of the Act. The applicants are hereby warned that in case of default of the indicated laws, section 38 (3) of the Penal Code shall be invited to take its course. Order accordingly.




F. H. Mtulya

Judge

21.10.2023

This Ruling was delivered in Chambers under Seal of this court in the presence of all four applicants and in the presence of learned State Attorney, **Mr. Davis Katesigwa** for the Republic and in the presence of the Social Welfare Officer, **Ms. Joyce Rwegalula** for the **Probation and Community Services Department of Mara Region.**


F. H. Mtulya

Judge

21.10.2023