

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

**DAR ES SALAAM DISTRICT REGISTRY**

**AT DAR ES SALAAM**

**CRIMINAL SESSION NO. 41 OF 2023**

**REPUBLIC**

**VERSUS**

**1. LEAH DORICE AGUNDA**

**2. MARTHA LAIZER**

**SENTENCE**

*2<sup>nd</sup> February 2024*

**MTEMBWA, J.:**

In this Court, the accused persons were arraigned for the offence of Manslaughter contrary to ***sections 195 and 198 of the Penal Code, Cap 16 RE 2019 (now RE 2022)***. It was alleged that the two, on **14<sup>th</sup> September 2020**, at Holly Cross Nursery and Primary School located at Kijichi area within Temeke District of Dar es Salam Region, did unlawfully caused the death of one **CATHBERT FELIX CHAWE**.

When the matter was due for plea taking and preliminary hearing, the Republic was represented by **Ms. Doroth Masawe**, the learned Principal State Attorney and the accused persons enjoyed the good service of **Mr. Hassan Kiangio**, **Mr. Fredirick Charles** and **Mr. Josia Noah**, both learned counsels. When the information on manslaughter was read over to the accused persons, they all pleaded guilty. Consequently, while the accused persons remained quiet, Ms. Masawe adduced the facts of the case. For clarity however, I find it opt to state, albeit briefly, the facts of the case.

It was alleged that on the 14<sup>th</sup> day of September 2020, being one of the students, in the morning, the deceased punctually arrived at Holly Cross Nursery and Primary School and as usual, assembled. On a usual sequencies of events, the school head girl announced several names of the noise makers, the deceased being one of them. As such, the named noise makers, including the deceased, were called to kneel down in front of others and thereafter, were taken to teacher's stuff office "B" whereby both of them were caned on their buttocks. It is alleged further that the said noise makers were caned six (6) strokes each whereby, each of the accused persons performed three (3) laps.

Having been so punished, the said noise makers, including the deceased, were allowed to access their class rooms. About ten minutes later, the deceased started to cry complaining of head ache and dizziness. He then bent his head on a nearby desk while asking fellow students to call a teacher for help. To the surprise of the most, as the deceased was trying to stand up to allow his fellow students to pass, he fell down. It was very unfortunate that when teachers arrived in the class, the deceased unconsciously was lying down.

The incident was reported to the head teacher one Sr. Monica and immediately thereafter, the deceased was rushed to Mara Dispensary at Kijichi for treatment. While there, **Dr. Patrick Soud** examined the deceased and satisfied himself that he cannot best handle the situation. As such, he referred the deceased to Temeke Hospital for further and better medical examination. On arrival, upon examination, it was discovered that the deceased was already dead.

On **27<sup>th</sup> day of September 2020** the deceased's body was medically examined and a report on post mortem examination revealed that the cause of death was due to "**ACUTE SUBDURAL BLEEDING MOST LIKELY DUE TO HEAD INJURY**". The facts are silent on the relationship that existed between caning on the buttocks

and the actual cause of the death. The Postmortem examination Report, Certificate of seizure and the sketch map of the scene of the crime were tendered and admitted as exhibits P1, P2 and P3 respectively. On the basis of the above facts, the accused persons were arraigned for the offence of **MANSLAUGHTER** as aforesaid.

When asked to reply to the facts, the accused persons conceded to each and every fact adduced. Consequently, this Court convicted both of them of the offence of manslaughter contrary to ***section 195 of the Penal Code (supra)***. The Republic, thereafter, informed this Court of their inability to be aware of the previous convictions of the accused persons.

Mitigating the sentence, Mr. Kiangio submitted that since there are no records on the previous convictions, the accused persons are first offenders. He added further that they are repenting on what they did. He added that the accused persons pleaded guilty to the charge and by doing so, time and costs of this Court have been served. It was the submissions by Mr. Kiangio further that caning was done in good faith and the accused persons could not easily anticipate the harm to the deceased. He said, the caning was performed on the deceased's buttocks and not to his head.

Mr. Kiangio continued to note that both of the accused persons have families to take care of. He added further that the 1<sup>st</sup> accused person, who is a widow to the late John Fransis who died in 2019, has three lovely issues both minors, the last one aged six years old. And that the 2<sup>nd</sup> accused person has been blessed with four lovely issues both minors, the last one being born on 31<sup>st</sup> March 2023. Lastly, Mr. Kiangio informed this Court that the accused persons happened to stay in remand prison for one year and six months. He thus prayed for leniency.

Having heard the submissions by the defense counsel in mitigation, I reserved the sentence of which I will now give.

I considered the mitigating factors by the defense counsel and in particular that the accused persons are the first offenders. I am mindful that every reasonable efforts should be made to keep first offenders out of prison (see ***Tabu Fikwa Vs. Republic (1988) TLR 48***). I have in mind also that the accused persons have pleaded guilty when the Charge was read over to them. They have served time and costs that would have been spent or incurred by this Court. I understand also that the remorse or repentance, expressed *inter alia*,

in the form of a plea of guilty, is a mitigating factor and must be given due weight by this court when sentencing the offender.

Moreso, one of the objects of punishment is the reformation of the offender. Contrition is the first step toward reformation and a confession of a crime, as opposed to brazening it out, is an indication of contrition. In such circumstances, courts normally impose a milder or lenient sentence. (see also ***Francis Chilema v. R (1968) H.C.D 510***). In ***Bernadeta Paul Vs. Republic (1992) TLR 97 (CA)***, the Court inter alia observed that had the Court taken into account appellant's plea of guilty to the offence with which she was charged, it would have come to conclusion that the appellant was entitled to much more lenient sentence than the sentence of four years she imposed. Of course, each case must be considered in its own merits.

I also considered the mitigating factor that the accused persons have families to take care of. It could appear, as submitted by the learned counsel for the defense, they all have children who are minors (seven in numbers), one of them, claimed to have been born on 31<sup>st</sup> March 2023 (aged approximately nine months). As such, I am mindful that heavier punishment may result into affecting other innocent

young persons, the future blood of this nation. The Court was also informed that the 1<sup>st</sup> accused person is a widow taking care of three minors and that she deserves meddler or lenient punishment.

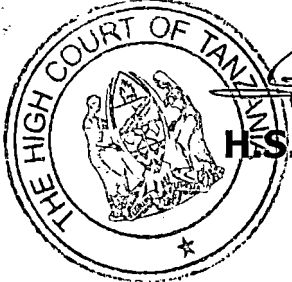

In addition, I considered the circumstances surrounding the commission of the offence. According to the facts, which Mr. Kiangio finds to be correct, the accused persons committed the offence in their normal discharge of duties, reasonably, in good faith. As per the facts, not only the deceased who was caned but all other students announced to be noise makers. I am not condoning the actions taken by the accused persons but in my conviction, as professionally trained teachers who are believed to be the guardians and care takers of the students while at school, they were acting in a reasonable way. In the interest of teaching as a profession and the industry at large, I think they deserve leniency.

I agree with Mr. Kiangio that time spent in remand prison waiting for trial or bail consideration is one of the mitigating factors. It was established that the accused persons stayed in remand prison for about one year and six months, approximately, eighteen months. Expectedly, they have learnt something.

Considering the facts of the case as adduced by the Republic, the mitigating factors as submitted by the defense counsel, the circumstances surrounding the commission of the offence and the Tanzania sentencing guidelines of 2023, I am in the opinion that the accused persons deserve non-custodial sentence. In my discretion therefore, I hereby absolutely discharge the accused persons under ***section 38(1) of the Penal Code, Cap 16 RE 2022***. I order accordingly.

Right of appeal explained.

**DATED at DAR ES SALAAM this 2<sup>nd</sup> February 2024.**

   
**H.S. MTEMBWA**  
**JUDGE**