

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA**  
**[IN THE DISTRICT SUB-REGISTRY OF SUMBAWANGA]**  
**AT SUMBAWANGA**  
**CRIMINAL SESSION NO. 68 OF 2022**

REPUBLIC

VERSUS

BENJA s/o THELATHINI .....1<sup>st</sup> ACCUSED

EMMANUEL s/o NJILE @ MISUNGA.....2<sup>nd</sup> ACCUSED

13<sup>th</sup> of JUNE 2024

**JUDGMENT**

**NANGELA, J.:**

The accused BENJA s/o THELATHINI and EMMANUEL s/o NJILE @ MISUNGA have been arraigned before this court facing a charge of MANSLAUGHTER contrary to Section 195 (1) and 198 of the Penal Code, Cap.16 R.E 2019. The deceased is one Salimba s/o Ikobela. The two accused persons as well as the deceased used to live in the same village of Kafisha, in Tanganyika District, Katavi Region.

The facts constituting their offence are brief. On the 26<sup>th</sup> of February 2022, two heads of cattle (2 bulls) property of one Joseph Alphonse Ndasi were stolen from his Kraal (cowshed). After the incident, a call for their search was made and several villagers, including the two accused persons gathered at Mr. Joseph Alphonse Ndasi and a search was mounted.

During the search, one of the stolen bulls was found in the Kraal of one Maduhu s/o Mpigija. It was peacefully recovered therefrom and handed over to its owner, Mr. Joseph Alphonse Ndasi. The search went ahead for the remaining bull and the two accused persons, in the company of other people, took part continued to take part in it. The searching team was able to find and identify the missing bull's slaughtered head in the house of one KAUSI. When the named KAUSI was interrogated, he divulged that he had purchased the bull he had slaughtered from one YONKOLO s/o MATHIAS. When the said YONKOLO s/o. MATHIAS was interrogated, he named the deceased SALIMBA s/o ISOBELA as the person from whom he had bought the bull which he sold to YONKOLO, and which was found to have already been slaughtered.

A pursuit of the alleged culprit SALIMBA s/o ISOBELA was made and the two accused in the company other people searched for him. They found the deceased resting at the Kraal belonging to his father. The two accused and those in their company awakened the deceased with a view to arrest him. However, when the deceased woke up from his rest, he armed himself with a machete (Panga). It followed that, as the two accused persons and their team sought to arrest the deceased, a fight ensued between them and the deceased who seemed to be avoiding his arrest. The deceased attacked the two accused persons with the Machete (Panga)

he had wielded and seriously injured them. In that fracas, the deceased was also seriously injured.

Owing to the injuries the two accused had sustained when they were attempting to arrest the deceased, the two reported at IKOLA POLICE POST and were issued with a PF-3. Their injuries were treated at Karema Health Centre. Although it has not been stated why they went to report at Karema Police Post without the deceased also being sent there, the facts are that, on the 27<sup>th</sup> of February 2022, the deceased's body was found lifelessly floating in NKUBA River. The death of SALIMBA s/o IBOBELO was made known to the Police at Tanganyika Police Station and, Police officers who, together with one, Dr. Mpeli Feston Rukogo, a medical doctor (MD) and the relatives of the deceased, visited the scene where the body of the deceased was found.

The medical doctor examined the body and observed that the deceased died of the severe injuries he had sustained on the head (traumatic brain injury). On that date of 27<sup>th</sup> of February 2022, the two accused persons were arrested at Karema Health Centre where they had previously gone for treatment. They were sent to Tanganyika Police Station where, upon being questioned, they admitted having unintentionally caused the death of the SALIMBA s/o IKOBELA. They were initially charged of murder contrary to section 196 and 197 of the Penal Code, Cap.16 R.E. 2019.

However, when their case was scheduled for a hearing on this 13<sup>th</sup> day of June 2024, the prosecution withdrew the

charges for MURDER and, acting under section 234 of the Criminal Procedure Act, Cap.20 R.E. 2022, substituted for it a lesser offence MANSLAUGHTER contrary to section 195(1) and 198 of the Penal Code, Cap.16 R.E 2019.

As is customarily required, upon reading of the new charge sheet (Information for MANSLAUGHTER) to the two accused persons who were called upon to plead thereto the accused persons unequivocally admitted having unlawfully caused the death of the deceased SALIMBA s/o IKOBELA. This court proceeded to enter a PLEA OF GUILTY to the offence of MANSLAUGHTER. Following the accused's PLEA OF GUILTY to the charge (information) the facts constituting the offence were read over and explained to the accused persons in a language clear and understandable to them. They were as well asked whether such facts were correct or otherwise. The accused persons admitted that the facts as read over and explained to them were correct, and that they fully accepted them as they were.

Having looked at the information and the facts so admitted by the accused and having been satisfied and convinced that the accused persons have unequivocally pleaded guilty to the offence of MANSLAUGHTER, the law is very clear. Where an accused person pleads guilty to the offence charged and his plea is unequivocal, the court will proceed and convict such an accused person.

In view of the above, this court does hereby find the two accused persons guilty of unintentionally causing of the

death of SALIMBA s/o IKOBELA, an act which constate the offence of MANSLAUGHTER contrary to section 195 and 198 of Penal Code, Cap.16 R.E 2022. Having been found guilty, this court does hereby convict the two accused as charged.

**SGD: DJN/.  
JUDGE  
13/06/2024**

### **PRE-SENTENCING PROCEEDINGS**

**Ms. Florida (State Attorney):** My Lord, there are no previous records of the accused persons. However, we pray that a commensurate punishment be imposed on the accused persons as a lesson to others with similar character who acts violently against others with no reasonable restraint. That is all I can say.

**SGD: DJN.  
JUDGE  
13/06/2024**

### **MITIGATION OF SENTENCE:**

#### **Ms. Sekela (Accused's Advocate)**

My Lord, as it has been stated, the accused persons are first offenders with no previous record of committing crimes. We pray for a lenient sentence to be meted put on them. My Lord it was not the intention of the accused persons to kill the deceased as they had gone with an intent to arrest the deceased believing that he was a law breaker. Besides, it was the deceased who started to attack them.

My Lord the first accused has a mark of a wound on his face above the mouth which he sustained from the deceased's attack, while the 2<sup>nd</sup> accused has a healed wound on his head which resulted from the deceased's machete attack. We also wish to state that, the accused person did seek a PF-3 from the Police and got treated.

My lord as we appear here in court, the two have shown remorse, as they have pleaded to a lesser offence and have all along been cooperative not only to the Police but also before this court as they have not wasted its time but admitted having unintentionally caused the death of SALIMBA s/ o IKOBELA. They have as such saved much cost including that of calling for witnesses.

My lord, their involvement in the offence was also minimal since the incident involved a good number of people who could not be arrested. My lord, as per the facts of the case, the accused persons are still young and hence, a usable force for national building, and have spent a period of two years and four months in remand prison.

My lord, it is evident that, in all that time they have learnt they useful lessons and that is why they were ready to plead to the offence. As such, we pray that this court take concern on what we have submitted and issue a lenient sentence on them. That is all.

**SGD: DJN.  
JUDGE  
13/06/2024**

## **SENTENCE**

I have heard from the submissions of the learned State Attorney for the Republic and from the learned counsel for the accused persons. As rightly submitted, the accused persons have no known prior criminal history or record. As first offenders, that factor is of an advantage to them when this court consider the appropriate punishment which it should impose on them.

I have also considered the fact that, it was the deceased who first attacked them during his arrest. That means that, had he yielded to their call for him to surrender and be put under arrest, perhaps he would have been alive to date, given that the intention of the accused persons, and those who accompanied them on the fateful date was to arrest the deceased was not to kill him.

It means, therefore, that, the deceased contributed to his own death in some way as he might have received the wounds which lead to his demise, be it from the accused persons or those in their company, in course of the accused persons' attempt to defend themselves given that he was armed with a machete and did use it against them.

I am also privy to the fact that the accused persons have readily cooperated with the Police and have even pleaded guilty to the charges, thus showing that they are remorseful for what took place at the time as it was not their intention to kill the deceased. However, while they, themselves, went to Police for medical attention having been wounded by the deceased, they seem to have acted rather recklessly as this court is not told why they also did not take the deceased to the same police post and then to Karema Health Centre for treatment since the facts shows that the deceased was also injured.

But all things remaining constant, I agree with Ms. Sekela, their learned advocate, that this court, taking all factors together, should issue a lenient punishment since they have spent two years and four months in remand prison. In my view, there is as well an element of recklessness and use of excessive force being in effecting the arrest which, nevertheless, seems to be coupled with the right on the part of the accused persons to defend themselves given that the deceased was fully armed with a

machete and did in fact inflict serious cut wounds on both accused persons.

According to the Sentencing Manual,2023, the offense of Manslaughter is classified in three level: A High level, a medium and a low level depending on various factors and how it occurred. In view of all what I analyzed here above, I find that, the level of seriousness of their offence would decrease to the low level, thereby attracting a lenient punishment. I, therefore, fully support what Ms. Sekela, the learned advocate for the accused person has stated in mitigation, as I also consider what the learned State Attorney said regarding the accused persons' previous record.

That being the case, this having found the accused guilty and convicted them on their own plea, and having made a finding that their offence of Manslaughter rests at the lower levels of seriousness owing to the circumstances pertaining to its commission, this court, in terms of section 38 of the Penal Code, Cap.16 R.E 2022, sentence the two accused persons, namely: BENJA s/o THELATHINI and EMMANUEL s/o NJILE @MISUNGA to a ONE YEAR CONDITIONAL DISCHARGE.

That means, therefore, that, within a period of twelve months (12) they should refrain from and not be involved in any offence. IN CASE OF BREACH during this period of 12 MONTHS' CONDITIONAL DISCHARGE, the accused persons will be subjected to an arrest and be liable to be sentenced for this offence they are today facing.

**It is so ordered.**



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DEO JOHN NANGELA  
**JUDGE**  
**13<sup>TH</sup> OF JUNE 2024**

Right of appeal explained and guaranteed.



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DEO JOHN NANGELA  
**JUDGE**  
**13<sup>H</sup> OF JUNE 2024**

