

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MTWARA
AT MTWARA
CRIMINAL SESSION NO. 45 OF 2022**

**THE REPUBLIC
VERSUS
SHAIBU SAIDI HATIBU**

RULING ON SENTENCE

22nd February, 2024 & 5th March, 2024

MPAZE, J.:

On 22nd February 2024, the accused was found guilty of Manslaughter of his wife. It was alleged that the motive behind her killing stemmed from the accused returning home and discovering the deceased engaged in a sexual act with another man. This incited tension and an altercation between the deceased and the accused, prompting the accused to gather firewood and use it to strike the deceased in various parts of her body, ultimately resulting in her demise.

Following the act, the accused dug a hole and buried his wife, covering it with rice to conceal any evidence.

On 25th March 2022 a month later, he voluntarily surrendered to the Mvuleni Street chairperson introducing himself under an entirely different

name. However, after an extensive interview with the Mvuleni Street chairperson, it was discovered that the accused had committed the crime of murder. Subsequently, this information was reported to the police station, leading to the arrest of the accused.

Given these facts, the prosecution has urged for a stiff punishment to be imposed on the accused, citing the following reasons:

1. The accused has a previous criminal record, where in 2010 was convicted and sentenced to 5 years imprisonment for unintentionally killing his biological mother. He completed this sentence in 2017.
2. The accused has forfeited the fundamental right to life of the deceased, which is protected under Article 14 of the Constitution of the United Republic of Tanzania.
3. The accused employed a dangerous weapon, specifically a '*gongo*', which proved lethal in causing the death of the deceased.
4. The deceased sustained multiple wounds in various parts of her body, including critical areas such as the head, eye, and nose.
5. Human life is irreplaceable, and no compensation can be given to restore a life that has already been lost.

Considering these aggravating factors and in line with the Tanzania Sentencing Guidelines, the prosecution contends that this offence should be categorized as high-level. Therefore, the prosecution urges the court to consider these aspects when delivering the sentence.

On the contrary, the defence counsel pleaded for a lenient sentence, citing the following reasons:

1. The offence for which the accused was convicted in 2010, involving the accidental killing of his mother, was deemed unfortunate. On the day of the incident, the accused was in a quarrel with his sister, and inadvertently, when he threw an object at his sister, it hit his ailing mother who was lying on the floor.
2. In this case, the accused lost his beloved wife, who had frequently engaged in extramarital affairs. The accused had raised complaints about this behaviour, which were addressed and resolved by community leaders.
3. On the day of the incident, the accused caught his wife in flagrante delicto, engaging in sexual intercourse with another man in their marital home. This act provoked him, leading him to pick up a nearby piece of wood and strike his wife with it. Although she

managed to escape temporarily, the accused actively sought her out, indicating remorse and the intention to save her life.

4. By admitting guilt, the accused has facilitated the court proceedings, saving costs and resources that would have been expended in a full trial.

Based on these reasons, the defence counsel implored the court to categorize the offence as falling under a low level, urging the court to impose the minimum possible sentence.

Firstly, I express gratitude to both parties for their familiarity with the Tanzania Sentencing Guidelines, 2023. Secondly, I have considered both the aggravating and mitigating factors presented by the parties. The prosecution contends that the offence falls under the high level, while the defence argues for categorization under the low level.

Guided by the guidelines and taking into account the presented factors, the court must consider additional elements such as the severity of the offence and how it was committed. These aspects play a significant role in determining the appropriate level at which the offence should be categorized.

As the court proceeds to assess the gravity of the offence, it will weigh these factors alongside with the arguments and evidence provided by both parties. This comprehensive evaluation will contribute to the court's decision on the level at which the offence falls within the sentencing guidelines.

Considering the aggravating and mitigating factors, it is evident that the accused is not a first offender, having been previously convicted of a similar offence and sentenced to five years.

After committing the current offence, the accused dug a hole, buried his wife, and fled. Furthermore, the accused attempted to conceal his identity, but suspicion arose during extensive questioning. The victim in this case is a vulnerable person, and death has resulted from the accused's actions.

In light of these circumstances, I concur with the prosecution that this offence falls within the high-level range. The provided sentencing guidelines suggest a starting point of 10 years to life imprisonment for offences of this nature.

Generally, the law stipulates that the maximum sentence for the offence of Manslaughter is life imprisonment with no minimum sentence specified. However, the sentencing guidelines provide the framework for

determining both the minimum and maximum sentences for Manslaughter.

Therefore, if the accused had not pleaded guilty and the case proceeded to a full trial, resulting in a conviction, the court could have sentenced the accused to 15 years imprisonment. However, since the case did not go through a full trial, the court established the starting point for this offence at 10 years.

Taking into account the provocation the accused experienced discovering his wife engaged in a sexual act with another man at their home, and also considering the age of the accused, who is 60 years old now. The court reduced the sentence by one year, leaving 9 years.

Upon a plea of guilt, the accused receives the advantage of a 1/3 reduction from the initial sentence of 9 years, resulting in a remaining sentence of 6 years. Consequently, the accused is now sentenced to serve six (6) years of imprisonment. The time spent in custody will be deducted by the prison authorities.

I have imposed this sentence as a lesson for the accused, aiming for it to serve as a deterrent. While incarcerated, he should learn to control his anger. I hope that this experience will lead to rehabilitation and a

reformation of his character. Having already taken a life, having killed both his mother and now his wife, he needs significant rehabilitation.

I envision that upon completing his sentence, he will reintegrate into society as a changed person. The community he returns to should witness a transformed person, fostering learning and understanding from his journey.

It is so ordered.



M.B. Mpaze,
Judge
5/3/2024

COURT: Right of appeal fully explained.



M.B. Mpaze,
Judge
5/3/2024