

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MTWARA
AT MTWARA
CRIMINAL SESSION NO. 58 OF 2022**

**THE REPUBLIC
VERSUS
RAMADHANI ALLY MOHAMEDI**

RULING ON SENTENCE

27th February, 2024 & 5th March, 2024

MPAZE, J.:

This case comes before the court today for sentencing. The accused has pleaded guilty to the lesser offence of Manslaughter charged contrary to sections 195 and 198 of the Penal Code Cap 16 RE 2022.

There is no dispute that the accused is the first offender. On the day of the incident, the deceased went to the accused's home and found him cooking '*mbaazi*'. A dispute ensued, leading to the spillage of the '*mbaazi*'. This triggered the accused's anger, prompting him to take a piece of wood from the kitchen and strike the deceased, who later succumbed to the injuries which resulted in his death.

Given this situation, the prosecution has requested a severe penalty for the accused, asserting that, in their view, he could have prevented the

offence by controlling his anger. They specifically urge that, in delivering the sentence, the convict be subjected to a high level, taking into account that the convict used a weapon in the commission of the offence.

On the defence side, they have pleaded for a conditional discharge for the accused person. They argue that the deceased himself was the cause of his death.

Other factors they ask the court to consider include the accused's confession at the Police and before a Justice of Piece, and his plea of guilt, thereby saving the court time and reducing costs for the court and government. The defence also emphasizes the accused's cooperation with the police and the Justice of Peace, his family's dependence on him, his remorse for the offence, and the time he has already spent in custody.

The court will duly consider all these factors to arrive at a fair and just sentence.

It is crucial to bear in mind that the issuance of punishment is not solely to subdue the accused but rather to rehabilitate, deter, and reform, not only the accused but also for the broader benefit of society.

Tanzania, in pursuit of these objectives, has established the Tanzania Sentencing Guidelines, 2023. I appreciate both parties for being cognizant of this guideline. As I proceed to deliver this sentence, I will

duly consider and adhere to these guidelines in ensuring that the goals of punishment are met.

In the sentencing guidelines, various criteria are outlined to be considered when issuing a sentence. The guidelines provide a range of penalties from minimum to maximum, dependent on the circumstances and nature of the offence and how the same was committed.

The offence for which the accused person is charged, Manslaughter, carries a maximum sentence of life imprisonment as provided by the law, with no specified minimum sentence. The minimum sentence can be determined by applying the sentencing guidelines.

The determinant factor to assess the level at which the offence falls, whether it is High, Medium, or Low, depends on the seriousness of the offence and how it was committed.

The prosecution contends that this case falls within the high-level category due to the use of a weapon. However, the defence argues that despite the use of the weapon, the context in which it was employed does not warrant a high level. They assert that, considering the accused did not actively seek the weapon but picked it up on the spot after being provoked, the offence should be considered at a low level.

No doubt a weapon was used in this case. However, upon examining the context of how the weapon was employed, this court cannot

categorically assert that its usage aligns with the criteria set for a high-level category.

As the defence counsel rightly pointed out, the weapon, in this case, was not actively sought but was a piece of wood found in the kitchen. Therefore, given these circumstances, I do not see the use of the weapon directly warranting a classification under the high-level category.

Considering the circumstances in which the offence took place, particularly the deceased's arrival at the accused's home and initiating violence, leading to the spilling of the '*mbaazi*' the accused was cooking, these circumstances do not sway the offence towards a high-level category. I am inclined to categorize it as a low-level range due to the following reasons;

First, is the use of unreasonable force, where the accused used the piece of firewood, which he picked up on the spot. It is important to note that he did not actively seek the piece of wood but used it to defend himself from the violence caused by the deceased upon arriving at his residence.

Secondly, the incident occurred while both the accused and the deceased were intoxicated.

Thirdly, there was a high degree of provocation as the deceased went to the accused's home, initiated a confrontation, and even went to the extent of spilling the food (*'mbaazi'*) the accused was cooking.

All these factors lead the court to conclude that the accused should be subjected to a low-level range of sentencing. In this level, according to the guidelines, the sentencing range is 0 to 4 years.

Whether the accused deserves absolute or conditional discharge or the maximum sentence of 4 years or less, will now depend on the aggravating, mitigating factors and the circumstances of how the offence was committed.

On the prosecution's part, they have sought a severe penalty solely due to the accused's use of a weapon, resulting in the loss of the life of the deceased. Regarding the defence, they provided various reasons as outlined above.

Upon careful examination of the circumstances surrounding the offence, the court is of the view that if this case were to proceed to full trial and if the accused was to be found guilty, the court would have imposed a sentence of two years imprisonment.

However due to the following factors;

1. Since his arrest, the accused has shown cooperation with the police.

He immediately confessed upon being brought to the police station

and, even before the justice of the peace, readily admitted to the offence without resistance.

2. The accused is a first offender, as there is no previous record
3. The accused expresses remorse for his actions.
4. The accused has a dependent family, and a severe penalty would adversely affect his family.
5. The accused has accepted responsibility for the offence without causing any inconvenience to the court or the prosecution by calling witnesses.
6. The duration spent by the accused in custody has also been taken into account.
7. Given the circumstances surrounding the offence, it appears that if the deceased had not arrived at the accused's home and instigated violence, the tragic outcome leading to his death might have been avoided.

Taking all these factors into consideration, the court finds that a conditional discharge is the fitting sentence for the accused person. Therefore, I hereby sentence the accused person to serve a sentence of 12 months conditional discharge, with a condition that he should not commit any offence during this period.

It is so ordered.




M.B. Mpaze,

Judge

5/3/2024

COURT: Right of appeal fully explained.




M.B. Mpaze,

Judge

5/3/2024