

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MTWARA
AT MTWARA
CRIMINAL SESSION NO. 43 OF 2022**

**THE REPUBLIC
VERSUS
HAMIS ALLY ATHUMANI**

RULING ON SENTENCE

19th February, 2024 & 5th March, 2024

MPAZE, J.:

The accused in this case was a part-time worker of the deceased. On the fateful day, the accused visited the deceased's workshop, where the deceased was engaged in carpentry activities. The purpose of the accused's visit to the deceased's workplace was to claim his payment of Tshs 5000/=. Instead, the deceased only gave him Tshs 2000. This is where the altercation between them began, and ultimately, the accused took a hoe handle that was present and started assaulting the deceased with it.

The cause of death, according to the doctor's investigation, was ***'Cardio cardiopulmonary arrest following severe traumatic brain injury.'***

Given this situation, the prosecution has requested a severe penalty for the accused. The seriousness of the offence committed by the accused is emphasized by the fact that he struck the victim on the head, leading to cardio-pulmonary arrest due to severe traumatic brain injury using a hoe handle.

Moreover, the incident was witnessed by the person identified in the case facts. According to them, these are compelling reasons to classify this offence as falling under a high level of severity.

On the opposing side, the defence counsel for the accused has requested a lenient sentence based on several grounds.

Firstly, the counsel highlighted that the accused is a first offender and has a dependent family. The counsel argued that the strike against the deceased resulted from the deceased pushing the accused, causing him to fall to the ground. In a fit of anger, the accused then picked up the hoe handle to react.

The defence counsel further emphasized that the accused expressed remorse for the incident. During the time spent in custody, the accused has reflected on how to manage anger. It was also noted that the accused did not attempt to flee after committing the crime.

The defence counsel reminded the court that by pleading guilty, the accused has expedited the court proceedings, thereby reducing associated costs.

Regarding the weapon used, the defence counsel submitted that the accused did not actively seek it out; rather, it was readily available at the scene of the crime.

In light of these considerations, the defence counsel urged the court to impose a sentence at the lower range. If deemed appropriate, the counsel requested the court to consider an absolute discharge for the accused. The defence counsel contends that the circumstances strongly support the imposition of a less severe punishment.

In determining an appropriate sentence, the court considers the principles of justice in sentencing, rehabilitation, reformatory and deterrence. The court acknowledges the loss suffered by the victim's family and underlines the need for a just and proportionate response.

It is important to note that, in the case at hand, the offence the accused is charged with carries a maximum sentence of life imprisonment; the law does not specify a minimum sentence.

However, with the introduction of the Tanzania Sentencing Guidelines, 2023 there is now a framework guiding sentencing. Under these guidelines, the punishment for the same offence varies depending

on the seriousness of the offence and how it was committed. The guidelines establish a range of sentences from low to high, taking into account aggravating and mitigating factors.

In the present case, despite the use of a weapon (hoe handle) and the presence of a witness to the incident, I am hesitant to categorize this offence as falling within the high level. This reluctance stems from the fact that the alleged weapon was found at the scene, and the person who witnessed the crime was not identified as either a family member of the victim or a vulnerable person.

Instead, I am inclined to believe that this offence falls within the low-level category due to the use of unreasonable force in self-defence. The defence counsel has argued that after being pushed by the deceased, the accused fell to the ground, leading to anger, and subsequently, the accused picked up the hoe handle and struck the deceased with it.

It is crucial to note that the accused decided to apply excessive force while claiming his right to Tshs 5000/=. These reasons lead me to view the circumstances under which the offence was committed as falls within the low level.

This level of severity allows for a range of penalties, 0 to a maximum of 4 years. Therefore, if this case were to proceed to a full trial, and the

accused were found guilty, the court could impose a maximum sentence of 4 years of imprisonment.

However, since this case did not go to the full trial, I find the starting point to be 3 years. Taking into account both aggravating and mitigating factors, including the accused's plea of guilty, which entitles him to a 1/3 reduction, the court hereby sentences the accused to 2 years imprisonment for the charge of Manslaughter. However, the time spent in custody will be deducted by the prison authorities.

The court also advises the accused to utilize this time for reflection and rehabilitation, to successfully reintegrate into society upon completion of the sentence.




M.B. Mpaze,

Judge

5/3/2024

COURT: Right of appeal fully explained.




M.B. Mpaze,

Judge

5/3/2024