

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB-REGISTRY

AT TARIME

CRIMINAL SESSIONS CASE NO. 56 OF 2023

REPUBLIC

VERSUS

MOHABE CHACHA MURIANI

RULING ON SENTENCE

Date of Last Order: 26/02/2024

Date of Sentence: 26/02/2024

Kafanabo, J.:

On 26/02/2024 the information was read over to the accused herein. He pleaded guilty to the charge of Act Intended to Cause Grievous Harm contrary to section 222(a) of the Penal Code, Cap. 16 R.E. 2022 (hereinafter the 'Penal Code').

Following his own unequivocal plea of guilty, this court convicted the accused for the offence of Acts Intended to Cause Grievous Harm contrary to section 222(a) of the Penal Code, Cap. 16 R.E. 2022. Having convicted the accused, the prosecution and advocate representing the accused were given an adequate opportunity to address the court on aggravating and mitigating factors to be considered during sentencing. Both discharged their duties with

circumspection. Henceforth, this court is required to determine an appropriate sentence for the offence committed. Section 222(a) of the Penal Code provides that:

"Any person who, with intent to maim, disfigure or disable any person or to do some grievous harm to any person or to resist or prevent the lawful arrest or detention of any person-

(a)unlawfully wounds or does any grievous harm to any person by any means whatsoever;

(b-g)-N/A

is guilty of an offence, and liable to imprisonment for life."

However, this is the maximum but not a mandatory sentence. The court upon cautious and judicious consideration, depending on the nature and seriousness of the offence, may exercise its discretion and impose a reasonable sentence.

The facts, evidence and aggravating factors as presented by the prosecution indicate that the offence was committed by using a lethal weapon, a machete. Also, the caution statement, admitted as exhibit 'P1', and an extrajudicial statement admitted as exhibit 'P2' indicate that the accused confessed to having slashed and seriously wounded the victim on various parts of the body. This is also supported by a medical examination report

dated 14th January 2023 admitted as exhibit 'P3' which indicates that multiple cut wounds were observed on the body of the victim.

Further, it is on record (see 'exhibit P3') that the accused slashed the victim several times including on the head and hands. The Accused also amputated the victim's two fingers namely; the middle and the ring fingers. The said facts indicate the seriousness of the offence committed by the accused and are taken as aggravating factors of the offence committed by the accused taking into account the fact that the attack on the accused caused permanent incapacitation. Given the said aggravating factors, this court places the offence committed on the 'High Level' in the sentencing process.

In mitigation, the court is acquainted that the offence was committed as revenge against the victim who, according to exhibits P1 and P2, assailed and injured the accused with an arrow in 2014 where the accused reported the same to the police.

The court is also cognizant that in the conversation before the accused attacked the victim, the victim replied to the accused that the accused was lucky, as the victim did not succeed in killing him on the day the accused was attacked with an arrow.

Further, the court considers the fact that the accused's actions were triggered by the said victim's provocative statement. However, this did not justify the accused's action of attacking the victim to the extent of amputating his two fingers. It is also noted that the appellant is the first offender and has dependants. The accused is also remorseful for the offence he committed.

The court also takes into account the fact that the accused also pleaded guilty to the offence of Acts Intended to Cause Grievous Harm contrary to section 222(a) of the Penal Code, Cap. 16 R.E. 2022 on the first time of the proceedings before this court.

This court is also conscious that the accused confessed to the police and justice of the peace for committing the said offence. This shows that the accused cooperated with the relevant authorities in providing information relating to the commission of the offence.

It is also noted that the accused has been in remand custody from 14/01/2023 to date, which is one year and forty-two days.

Now therefore, as indicated above, the law, as far as the offence of Acts Intended to Cause Grievous Harm contrary to section 222(a) of the Penal Code, Cap. 16 R.E. 2022 is concerned, provides for the maximum sentence

of life imprisonment, the minimum sentence is not stated, it is the discretion of the court which must be exercised judiciously.

This court, after considering both aggravating and mitigating factors, the custodial term of the sentence, if the case would have gone to full trial, would have been fifteen (15) years of imprisonment. However, the court takes into account that the accused confessed to committing the offence at the earliest stage of the investigation. The accused also pleaded guilty at the first opportunity in court proceedings, thus fifteen (15) years that the court considered imposing, are reduced by one-third and remain 10 years of imprisonment (see the cases of **Charles Mashimba v. Republic [2005] TLR 90** and **Swalehe Ndungajilungu v. Republic [2005] TLR 94**).

Considering other aggravating and mitigating factors, as expounded herein above, the remaining ten (10) years are reduced, further, by three years, and therefore seven (7) years of imprisonment remain. The court also considers the accused's circumstances (i.e. young age, dependants and previous good character), and the remaining seven (7) years of custodial sentence are further reduced for one year. This makes the remaining time of imprisonment to be six (6) years. Taking into account the time spent by the accused in remand since his arrest on 14/01/2023 to date, that is one

year and 42 days, the remaining six years are thus reduced by the said time spent in remand since his arrest. The case of **Swalehe Ndungajilungu v. Republic [2005] TLR 94** is relevant.

Therefore, this court **sentences the accused to four (4) years and three hundred twenty-three (323) days of imprisonment** from the date of this order.

Also in light of sections 25 and 31 of the Penal Code, Cap. 16 R.E. 2022 and section 348(1) of the Criminal Procedure Act, Cap. 20 R.E. 2022, the accused is **ordered to pay the victim (Mr Itembe Isengi Romara) a compensation of Tanzania Shillings Four Million Only (TZS 4,000,000/=)** for the injuries suffered.

It is so ordered. Right of appeal explained.



K. I. Kafanabo

Judge

26/02/2024

Ruling on sentence delivered in the presence of Mr. Davis Julius Katesigwa State Attorney, representing the Republic, and in the presence of Mr. Paul Obwana (Advocate for the accused). The accused was also present and in custody.



A handwritten signature in blue ink, appearing to be "K. I. Kafanabo".

K. I. Kafanabo

Judge

26/02/2024