

TANZANIA / JUDGMENT

REPUBLIC vs ELIAS CHACHA NYAMANGUYE MAFIKIRA

COURT
TANZLIIDECIDED
28 May 2023

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MUSOMA SUB-REGISTRY AT TARIME CRIMINAL SESSION CASE NO 78 OF 2023 REPUBLIC VERSUS ELIAS S/O CHACHA NYAMANGUYE @MAFIKIRA RULING ON SENTENCE 16/10/2024 & 06/11/2024 Kafanabo, J.: On 16/10/2024 the information for the offence of Manslaughter contrary to sections 195 and 198 of the Penal Code, Cap. 16 R. E. 2022 (hereinafter the 'Penal Code') was read over to Elias s/o Chacha Nyamanguye @Mafikira (hereinafter the accused). The particulars of the information were clear that Elias s/o Chacha Nyamanguye @Mafikira on the 28th day of May 2023 at Nyantira Village within Tarime District in the Mara Region unlawfully killed one Marwa S/O Nyamwitanga (hereinafter 'the deceased'). The accused unequivocally pleaded guilty to the said information in the following words 'V/ kweli niiimuua Marwa Nyamwitanga Marwa biia kukusudia.' (which can be translated as 'I indeed killed Marwa Nyamwitanga Marwa unintentionally/accidentally'). The accused, thereafter, admitted the facts constituting the offence as indicated in the proceedings. i Following the accused's unequivocal plea of guilty, this court convicted the accused for the offence of manslaughter contrary to sections 195 and 198 of the Penal Code. Having convicted the accused, the court invited counsels representing both parties to address the court on matters they consider relevant and that will have a bearing on the sentencing of the accused. The learned counsels diligently made their submissions for their respective cases as indicated herein below. Ms. Dotto Banga, a learned State Attorney, for the Republic submitted that the offence of which the accused has been convicted carries a maximum punishment of life imprisonment, she prayed that the same be considered by the court. It was also submitted that a life of a human being has been lost and the same cannot be restored, and it is clear that the death of the deceased was caused by the accused who pleaded guilty. The deceased had a right to live and had a family which depended on him and thus the family had lost a father and the nation lost the workforce. It was added by the Republic that the accused also used a lethal weapon and attacked the deceased on a vulnerable part of the body, the stomach. According to the Sentencing Guideline of the Court, appendix 'B', prescribes the gravity of the offence when a lethal weapon is used, it is categorized as high-level manslaughter and the minimum punishment prescribed is ten years or more. The punishment to be imposed on the accused should be aimed to be a lesson to the community because, in this community, it is seen as proper to use lethal weapons in attacking others. The sentence should show that such criminal behaviour is not acceptable in our society. 2

In mitigation, Mr. Belbembe, learned Counsel for the accused, submitted that the accused deserves lenient punishment /sentence or discharge for various reasons. It was submitted that the accused was provoked by the deceased, this is proved by the material facts read by the Republic because they show that the deceased attacked the accused with a machete. This was a clear provocation; the deceased cannot escape liability even though he is not with us today. Moreover, the deceased also blamed the accused that he had a sexual relationship with his wife, this was also another provocation. It was also submitted that in the light of the facts of the matter, the accused was defending himself because he was attacked first by the deceased with a machete and the accused responded by using a knife. So it is clear that both parties had lethal weapons. Given the nature of the weapons used, the death of the deceased was an accident because the force used by the accused to defend himself was reasonable under the circumstances of the case. Moreover, the learned counsel urged the court to consider that the accused pleaded guilty to the information and thus has served time of the court. It was also highlighted that the accused also cooperated with the relevant authorities, he surrendered himself to the police, which shows remorse for the offence committed. It was also submitted that the accused is also young; he has three children depending on him and thus require care from their father. In light of the above, this court is thus required to determine an appropriate sentence for the offence committed by the accused. The relevant 3 law on sentencing the accused is found in sections 195 and 198 of the Penal Code which provides that: 195.-(1) Any person who by an unlawful act or omission causes the death of another person is guilty of manslaughter.

(2) Any unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether the omission is or is not accompanied by an intention to cause death or bodily harm. 198.-Any person who commits manslaughter is liable to imprisonment for life. The above section provides a punishment of life imprisonment for a person who is convicted of the offence of manslaughter. However, this is the maximum sentence set by the law, but not an indispensable sentence to be imposed on a convict. The court upon thoughtful and prudent consideration, taking into account the circumstances and facts of each particular case, also depending on the nature and gravity of the offence, may exercise its discretion and inflict a reasonable sentence on the convict. In the case of Bahati John vs Republic (Criminal Appeal No. 114 of

2019) [2022] TZCA 407 (11 July 2022) when considering a sentence of the person found guilty of manslaughter under section 195 of the Penal Code, and when interpreting the wording of section 198 of the Penal Code which prescribes punishment for the offence of manslaughter, the Court of Appeal held that: "The term 'liable' used in the above provision as highlighter does not impose life imprisonment as the only sentence to a convict of 4 manslaughter. It gives flexibility to the presiding judge to exercise his/her discretion in sentencing depending on the circumstances of each case after considering both the aggravating and mitigating factors, the hiit being total incarceration for life. The Court in the case Faruku Mushenga v. Republic, Criminal Appeal No. 356 of 2011 (unreported) was guided by the interpretation of the phrase 'shall be liable to' as it was stated in Opoya v. Uganda (1967) EA 752 by the defunct East Africa Court of Appeal in the following manner:

"It seems to us beyond argument that the words shall be liable to do not in their ordinary meaning require that imposition of the stated penalty but merely express the stated penalty which may be imposed at the discretion of the Court. In other words, they are not mandatory but provides a maximum sentence only and while the liability existed the court might not see fit to impose it." Having expounded the prescribed punishment as per the law and its applicability, the undisputed facts as presented by the prosecution indicate that the offence was committed around noon when one Rhobi d/o Nkori Kerambo was at her household where she was selling local alcohol and there were other persons including the accused and the deceased (Marwa s/o Nyamwitanga Marwa) drinking local alcohol. A dispute arose between the deceased and the accused which was flared by an allegation raised by the deceased that the accused had a sexual relationship with the deceased's wife. The accused denied the allegation. Then a fight broke out between the accused and the deceased; as a result, the deceased fished out a machete which was hidden in his coat and slashed the accused on the back. Then the accused took a knife hidden at his waist and stabbed the deceased on the left side of the stomach, the deceased fell and the accused ran away. The wound on the deceased body is also established by a postmortem report of the body of Marwa s/o Nyamwitanga Marwa, dated 29th May 2023 which was admitted as exhibit 'P2'. The report indicates that the victim's death was caused by heart failure due to excessive bleeding. The report further shows that the wound was caused by a sharp object. In light of the above facts, it is clear that the deceased was the one who attacked the accused first with a lethal weapon, a machete, and slashed the accused on the back. The accused responded by stabbing him with a knife. As submitted by the learned defense Counsel, this is a clear case of self-defense taking into account the fact that both the accused and the deceased were drinking alcohol at the time. In the case of Ally Abdallah Kawai vs Republic (Criminal Appeal No. 159 of 2016) [2016] 7ZCA 699 (29 August 2016) the court of Appeal held that: "In Buku/uku/u Ndomba v. Republic (supra) the Court in stating the circumstances under which the defence can be raised by an accused person said: "where self defence is pleaded, the conduct which induces the fatal blow injury must have come from the deceased and not from some third person." 6 In this case it was the deceased who attacked the accused first with a machete, which means it was the deceased's conduct that induced the stabbing by the accused. It is also on record that on the 29th May 2023, the day following the fateful incident the Accused surrendered himself at Tarime Police Station where his statement was taken and confessed to commit an offence. He was also sent to a Justice of Peace before whom he confessed the commission offence. This shows that the accused cooperated with the relevant authorities in providing information relating to the commission of the offence (see Charles Mashimba v. Republic [2005] TLR 90. It is also noted that the accused has been remanded from the day he surrendered to the police which was 29/05/2023 to date 06/11/2024 which is more than seventeen (17) months. Now therefore, as indicated above, the law with respect to the punishment for the commission of offence of manslaughter is section 198 of the Penal Code (supra) which provides for the maximum sentence of life imprisonment, the minimum sentence is not stated, it depends on the discretion of the court which must be exercised cautiously and

prudently. This court, after considering both aggravating and mitigating factors stated herein above places this matter in a category of low level of manslaughter because of the high degree of provocation as demonstrated herein above, and that the accused used reasonable force if defending himself. This is also according to the guidance provided in the Tanzania Sentencing Guidelines, 2023 (hereinafter the 'guideline'). The guideline also provides that if the court categorizes the offence of manslaughter at the low level, the sentencing range commences with absolute or conditional discharge to a maximum of four (04) years imprisonment. Under the circumstances of the present case, this Court is of the view that the custodial term of the sentence would have been four (04) years of imprisonment. However, the court takes into account the fact that the accused surrendered himself to the police and confessed committing the offence. The accused also confessed committing the offence before the justice of peace. Thus the four (04) years that the court considered imposing on the convict are reduced by one-third, that is one (01) year and four (04) months, in line with the guideline. Also, the Court of Appeal cases of Charles Mashimba v. Republic [2005] TLR 90 and Swalehe Ndungajilungu

- v. Republic [2005] TLR 94 are relevant. After the said reduction, two (02) years and eight (08) months of imprisonment remain. Considering other aggravating and mitigating factors, including the acrimony between the deceased and the convict, the circumstances under which the offence was committed, that is in the act of self-defence and the accused's personal circumstances (i.e. young age and three children depending on him), the remaining two (02) years and eight (08) months the court considered imposing on the accused are reduced further, by one year (01). Therefore, one (01) year and eight (08) months of imprisonment (which makes a total of twenty (20) months) would be remaining. Further, the Court also takes into account the time spent by the accused in remand since his arrest on 29/05/2023 to date 06/11/2024 which is more than 8 seventeen (17) months (see the case of Swalehe Ndungajilungu v. Republic [2005] TLR 94). Therefore, if the seventeen (17) months are deducted from twenty (20) months, only three months of imprisonment remain. Therefore, this Court is of the view that the time the accused served in remand since his apprehension serves a great deal of justice of the case. The accused is thus sentenced to serve Three (03) Months of imprisonment from the date of this ruling. It is so ordered. Right of appeal explained. Dated at Tarime this 6th day of November 2024 Ch //S/ k. IKafanabo Judge 06/H/2024 The ruling was delivered today in the presence of Mr. Davis Katesigwa State Attorney, representing the Republic, and in the presence of Shadrack Belbembe, Advocate for the accused. The accused was also present and in custody. Judge 06/11/2024 9

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/321860/source_file/1cc74c6577896004/REPUBLIC_vs_ELIAS_CHACHA_NYAMANGUYE_MAFIKIRA.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/Manslaughter-tanzlii-2023--6a3ea5243b1caa9129819ebd>

Prepared on 13 October 2026 · Esheria