

TANZANIA / JUDGMENT

DENIS LUTA JGMT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA JUDICIARY BUKOBA SUB
REGISTRY AT BUKOBA ORIGINAL JURISDICTION CRIMINAL SESSION NO. 35151 OF 2025 THE
REPUBLIC VERSUS DENIS s/o LUTA ACCUSED
JUDGEMENT OF THE COURT Date of last Order & Judgment 11/2/2025 BEFORE: G.P.MALATA,J
The accused, Denis s/o Luta, aged 19 years, a Nyambo by tribe, peasant and resident of Chanika
village, Karagwe District in Kagera region stood charged for an offence of manslaughter contrary
to sections 195 and 198 of the Penal Code, Cap 16 R.E. 2022 for causing death of one Joel s/o
Johansen. The death occurred on 19th May 2024 at Chanika area, Karagwe District in Kagera
region. In a nutshell, on the material date, at around 20:00 hrs, the accused was drinking alcohol
at the bar owned by one Koku s/o Mulokozi which is located at the area famously known as
Stesheni. While in there he saw the victim also drinking alcohol together with his fellows.
Unfortunately, the quarrel arose between the 1 accused and victim. The victim took a bottle of
beer and a knife and started to chase the accused. Accused picked up a stone, threw it to victim
and kicked on the right side of the head. The victim felt unconscious while bleeding. Accused
absconded to unknown place. The victim was taken to Chanika dispensary where he was given a
referral to Nyakahanga hospital. On arrival at Nyakahanga hospital, the victim was examined and
revealed that, he was already dead. The incident was reported to Kayanga police station whereby
the police officers arrived at the crime of scene and drew a sketch map. The deceased's body was
examined by Dr. Muhindo s/o Kighuta who prepared the report on post –mortem examination
and stated that, the death was due to severe Traumatic brain injury due to being hit by a blunt
object. The accused was arrested at Mutukula on 10th, June 2024. Accused was interrogated by
police officers, he confessed to have caused the death of deceased. On completion of
investigation, the Republic filed a charge of manslaughter against the accused contrary to
sections 195 and 198 of the Penal Code, Cap 16 R.E. 2022. On 11/02/2025, parties to the case
appeared before this court for preliminary hearing. The Republic appeared through Ms. Agnes
Awino and Mr. Alfred Tairo 2 learned State Attorneys whereas the accused appeared represented
by Mr. Gerase Ruben learned counsel. Upon the charge for manslaughter being read over and
explained to the accused in kiswahili, the accused pleaded guilty to the offence he stood charged
and stated that: “Ni kweli kuwa nilimuua marehemu Joel Johansen bila kukusudia” The court
recorded the said plea of guilty as per the accused's words. Thereafter, facts of the case were read
over and explained to the accused and in return he replied that; “Ninakubaliana na maelezo
yaliyosomwa kuwa ni sahihi”. Upon being satisfied of unequivocal plea of guilty by the accused,

one, Denis s/o Luta to the offence of manslaughter for causing the death of one Joel s/o Johansen as stated herein above, this court in terms of section 228 (1) and (2) of the Criminal Procedure Act, Cap.20 R.E. 2022, found the accused guilty for the offence of manslaughter c/s 195 and 198 of the Penal Code, Cap. 16 R.E. 2022. The section reads that;

- (1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge
- (2) Where the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses and the magistrate shall convict him and pass sentence upon or make an order against him, unless there appears to be sufficient cause to the contrary. 3 Having found the accused guilty for the offence of manslaughter as stated herein, this court entered conviction of the accused for the offence of manslaughter c/s 195 and 198 of the Penal Code, Cap. 16 R.E. 2022. The court invited both counsels for antecedents and mitigation respectively. Ms. Agnes Awino learned State Attorney on behalf of the Republic stated that, they have no previous criminal record of the accused. However, she prayed for stiff sentence to be provide a lesson to accused by taking away one's life. Further, She pointed other reasons for stiff sentence that; one, accused used weapon in hitting the accused leading to death, two, he took law in his hands, thence hitting the deceased, three, accused did not assist the deceased after incidence but run away, four, accused absconded until when he was arrested at Mutukula Village. By way of mitigation, Mr. Gerase Ruben learned counsel for the accused prayed for lenience sentence for the reasons that; first, The accused is a first offender, second, accused pleaded guilty to the offence, three, accused has demonstrated guiltiness from the start as he confessed before police officers at Mutukula police station, fourth, accused served time and resources which could have used if he had not pleaded guilty to the offence, fifth, circumstances of the event is on provocation happen at brew bar where the accused and deceased were drinking, sixth, the accused run from the fracas but the deceased kept chasing him while holding bottle of beer and knife started 4 intending to injure the accused, seventh, accused had no intention to kill the deceased, eighth, accused was exercising self defence in the circumstance, ninth, accused is a youth aged 20 years, tenth, accused has been in custody for seven (7) month from arrest. In view of the antecedents and mitigation from the both counsels respectively, it is undoubtedly, that the accused terminated the life of deceased. The circumstances under which the death occurred are well narrated by the Republic, among others, that one, they were all at brew bar drinking beer, two, conflict erupted between the accused and deceased, three, accused run away from the scene of crime, the bar, four, the deceased took a bottle of beer and knife and commenced chasing the accused, five, accused picked a stone and hit the deceased at the head, six, deceased sustain head injury which led to sever traumatic brain injury, seven, accused was nineteen (19) years old at the time he committed the offence. In sentencing, courts have been taking several factors including; one, identifying statutory sentencing range for the offence – the maximum and minimum sentences in law, two, determining level of seriousness of the offence within the range, three, considering all relevant aggravating and mitigating factors for the offence, four, considering of the accused's

personal circumstances, any other offences committed by accused, totality principle, co-accused's sentence, any co-operation with authorities and information from the victim, five, considering predominance of the offence in the society and six, considering circumstances under which the offence took place, seven, considering range of force applied leading to termination of deceased's life. 5 The above factors were also considered in the case of R. V. Kidato Abdala (1973) LRT 82 where the court stated that; "The court has to consider several factors in sentencing including the record of the accused, the interests of society and those of the accused, the nature of the offence and its incidence in the locality". Also, in the cases of Republic Vs. Musa Muganda (1990) TLR 9, Republic Vs Mohamed Mohamed (1987) TLR 34 and Republic Vs. Hussein Rajab (1982) TLR 302. In consideration of all the circumstances leading to the death, it is clear that, the conduct of the accused after conflict sound very reasonable as he run away from the scene of crime. Astonishingly, the deceased went chasing the accused whole holding a bottle of beer and a knife with view of injuring him. The deceased's act was uncalled for. Accused had no weapon at a time. Accused's running away demonstrates nothing but how he was honest and admitted defeat though it was not the case. That said and done, this Court finds that, hitting by stone of the deceased leading to death was unfortunate. Further, the deceased bears much blame for his act of taking a bottle of beer and knife and commenced chasing the accused who had run away from fracas. The accused's conduct meant, self-admission of defeat from conflict. Worse indeed, the deceased continued to run after accused armed with weapons against a person who had no weapon. Also, the accused had not directed any blow to the deceased either using hand or any kind of weapon. 6 In the event, this court finds that, the accused had nothing much to be blamed. He did take all reasonable steps to get out of conflict but deceased insisted for the outcome to happen. It is undeniably that, the accused deserve much lenience sentence. Consequently, I hereby sentence the accused to serve one (1) year conditional discharge. It is ordered that, within that period, accused shall not commit any offence. In case he commits and convicted, he shall in addition to sentence imposed thereof serve one (1) year imprisonment. IT IS SO ORDERED. DATED at BUKOBA this 11th February, 2025 G. P. MALATA JUDGE 11/02/2025 JUDGEMENT delivered at BUKOBA this 11th February, 2025 in the presence of all parties. G.P.MALATA JUDGE 11/02/2025 7

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