

TANZANIA / JUDGMENT

Criminal Session Case 22519 of 2024 Judgment MrishaJ

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IN THE HIGH COURT OF TANZANIA (SUMBAWANGA DISTRICT REGISTRY) SITTING AT MPANDA
CRIMINAL SESSION CASE NO. 22519 OF 2024 (Originated from Miele District Court in P.I. No.
6080 of2024) REPUBLIC VERSUS REGINA KISENZA..... ACCUSED

JUDGMENT

1CP & 13th September, 2024 MRISHA, J. The accused person Regina Kisenza had on the last hearing date, been found guilty and accordingly convicted on her own plea of guilty to the charge of Manslaughter contrary to section 195 and 198 of the Penal Code, Cap 16 R.E. 2022 henceforth the Penal Code. Her sentence was however, reserved and she was scheduled to be sentenced on 13th day of September, 2024 which is why she has been brought today for that purpose. Before going to that stage, it is important for me to recapitulate the facts leading to the mounting of conviction against the said accused person. i It was alleged before this court that on the 9th day of February, 2024 during evening, the deceased person went to the house of the accused person. That on the fateful date at early hours, the accused person and deceased had a fight, and in the course of fighting, the accused person grabbed a wood stick and used it to assault the deceased person on the head; the deceased fell down and became unconscious. That the accused person out of fear, dragged the deceased person out of the house for about 123 meters away from their house, in the bush. She then left the deceased at the said bush without help. On the next day 10th February, 2024 at about 6:00 hours, the passerby heard a groaning voice from the bush near the deceased house. The neighbours gathered at the scene where they found the deceased lying in the said bush. The good Samaritans took the deceased to the Ilunde Police Station and later to Ilunde Health centre. That the deceased was put under doctor's attention for some few minutes, but the deceased died. The information about the incident reached to Ilunde Police Station. The Police Officers led by one A/Insp. Isaya Mlekuzi visited the crime scene. That the accused person was interrogated at the crime scene and confessed to have caused the death of the deceased in the cause of 2 fighting between them. She was arrested and taken to Inyonga Police Station where upon being interrogated, she confessed to have killed the deceased person. That on 10th February, 2024 the autopsy was conducted by Dr. Moses Antony Mbonda. The deceased body had a cut wound on the left eye and large rations on the left part of the head. It was revealed that the deceased death was due to haemorrhagic shock, secondary traumatic brain injury. That the

accused person on the 14th day of February, 2024 was taken to the Justice of Peace one Proscovia Nihongataire of Inyonga Primary Court. The accused confessed to have caused the death of the deceased person. That the accused was arraigned in Court and charged with an offence of Murder contrary to section 196 and 197 of the Penal Code which was however, substituted to that of manslaughter and upon the same being read over and properly explained to him, the accused person plead guilty. The accused admitted to the correctness of the above facts and raised no objection regarding the prosecution prayer to tender the report on post mortem examination to be admitted as an exhibit. Consequently, the court found the said accused guilty of the offence charged and convicted him, as stated above. 3 During pre sentencing hearing, the prosecution attorney just informed the court that the accused person is a first offender, but it is the prosecution humble prayer that the court be pleased to consider the prevailing circumstances of the case at hand, and sentence the accused person in accordance with the law. As could be expected, the learned defence counsel urged the court to impose a lenient sentence upon the accused person for several reasons. The accused has no previous criminal records; hence, served the time and resources for both the court and government. Secondly, the accused did not intend to kill the deceased, but was applying a self defence which however, led to deceased death. Thirdly, it was submitted that the accused person has three children whose father just passed away some years ago; hence she is the only one whom the deceased children depend on. Fourthly, the accused has been in remand custody for about seven months (7); hence, she might have repented for her unlawful act and learned. Sentencing the accused person is a judicial process which is normally undergone after the trial court has convicted the accused person of a criminal offence and in law, a person is said to have been sentenced if he is charged under a law which creates a specific offence that can be 4 judicially ascertained and which prescribe a specific punishment for the offence. (See DPP v. Simon G. Marwa and Another [1994] T.L.R 330 (CA). The above legal position entails therefore, that before sentencing the offender and apart from considering other factors, the trial court is expected to consider whether the applicable law creates a specific offence that can be judicially ascertained and which prescribe a specific punishment for the offence. In our case, it is apparent that the accused person stands charged with a specific offence of Manslaughter contrary to section 195 and 198 of the Penal Code and it is obvious that the said law has prescribed a specific punishment for that offence which is life imprisonment, as a maximum penalty. However, in assessing sentence for the similar offence, regard need be had to statutory guidance provided under the Tanzania Sentencing Guidelines, 2023 (the Tanzania Sentencing Guidelines) which sets three levels for the court to use in assessing the proper sentence whilst considering the aggravating and mitigating factors. According to the Tanzania Sentencing Guidelines, the level of seriousness of the offence of manslaughter is ranges from high, medium to low level. 5 Thus, considering the above aggravating and mitigating factors, I am of the considered opinion that the circumstances leading to the commission of the offence charged, fall under the low level. This is because, it is on record that death of the deceased person which the accused herein caused unlawfully, happened as a result of fighting and the accused used unreasonable force in self defence after being highly provoked by her deceased husband. It is also crystal clear that the accused was negligent when she grabbed a piece wood stick and used it to hit the deceased on the head, thus causing his death. The

admitted facts reveal inter alia, that immediately after assaulting the deceased, the accused became coward which prompted her to drag the deceased from their house for a certain meter's distance to a nearby bush and left him there. This again, justifies that she did not intend to cause the deceased death, but did that unlawful act in self defence hoping maybe, the deceased would stop fighting with her, but not pass away. I had also studied the demeanour of the accused person in the dock when the presentencing hearing was ongoing, and observed that indeed she was shivering and unsettled which tells that she actually did not intend to cause death of the deceased person. I think that might also have been contributed by her seven months stay in the prison remand where she 6 could not expect to be and experience the hardness of life. Hence, I agree with her learned defence counsel that she has repented and learned for what she had done to her deceased husband. Therefore, with all the above factors and the foregoing reasons, I am of the strong opinion that the accused person namely Regina Kisenza is entitled to a lenient punishment in order to reform her. She is thus, sentence to a two years (2) custodial sentence. It is so ordered. 7

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