

TANZANIA / JUDGMENT

republic vs omary salum hamisi sadiki

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THE UNITED REPUBLIC OF TANZANIA IN THE HIGH COURT OF TANZANIA (MTWARA DISTRICT REGISTRY) AT LINDI CRIMINAL SESSION CASE NO 41 OF 2020 THE REPUBLIC VERSUS OMARY SALUM HAMISI SADIKI RULING ON SENTENCE 7/11/2022 LALTAIKA, J, The accused person before me OMARY SALUM HAMIS SADICK hitherto charged with the offence of Murder contrary to section 96 of the Penal Code Cap 16 RE 2002 (now RE 2022) has on this 7th day of November 2022 pleaded guilty to the lesser offence of Manslaughter c/s 195 of the Penal Code Cap 16 RE 2022. The accused has been in remand custody pending this trial since 2019 on allegations that on 3/9/2019 at Chikonji Village in the District and Region of Lindi, the accused willfully and unlawfully killed Nasra d/o Selemani by stabbing her in the stomach using a knife. The accused and deceased were husband and wife. They had been married since 25/2/2019, hardly seven months before the incident. I want to put clearly at the outset that pleading guilty to manslaughter does not mean the accused is no longer responsible for the felony he allegedly committed. Both murder and manslaughter are homicide that is, killing of a human being by another. Our law presupposes every homicide to be unlawful. In the case of *Gusambi Wesonga v. Republic* [1948] 15 EACA 45, the erstwhile Court of Appeal for Eastern Africa articulated this point thus: "Every homicide is presumed to be unlawful except where circumstances make it excusable or where it has been authorized by law. For a homicide to be excusable it must have been caused underjustifiable circumstances example in self defense of property." Not all homicides are murder, but all murder are homicide. Nevertheless, it is the interest of the public at large, through the law of murder, that every homicide be presumed unlawful until proved otherwise. This raises the standard of protection of the right to life which is considered the mother of all rights. It is only when the law of murder is allowed to operate on this large territory that the function of protecting the right to life is achieved. The homicide in the instant matter is neither legal (authorized by law) nor justifiable (such as in self-defense). Consequently, having convicted the accused person as per his own plea of guilty, I am inclined to sentence him accordingly. While the mandatory sentence for murder is death, the maximum sentence for manslaughter is life imprisonment. The court may, however, reduce the sentence depending on peculiar circumstances of a given case. In the next paragraphs I shall unpack the nature of the homicide in the instant matter to find out if there are any factors that warrant reduction of the sentence of life imprisonment. Criminologists have argued that leading causes of homicide are; money and

property, drug and alcohol, sexual motives, provocation, self-defense, religious and cultural causes, psychiatric, psychological, animosity, and jealousy, among other factors. As alluded to in the introduction to this ruling, the accused and the deceased had been married on 25/2/2019 and the killing took place on 3/9/2019 hardly seven months of marriage. The homicide in the instant matter therefore, in my opinion, falls under the category of jealousy. Inexperience and naivety may also have contributed. I say so because, when the accused and deceased got married, they were only 19 and 18 years old respectively. I would add that the couple was too young to understand that life in marriage requires tolerance. If one has a bad wife or bad husband, advised Judge, J. a better alternative than stabbing him or her fatally would be to simply walk out or take up the stairs. In the exact words of Judge J. in *R. v. Thornton* [1992] 1 ALL ER 306 "There are... many unhappy, indeed miserable, husbands and wives. It is a fact of life. It has to be faced... But on the whole it is hardly reasonable, you may think, to stab them fatally when there are other alternatives available, like walking out or going upstairs." An equally intriguing entry by MURRAY A. STRAUS on Family Violence in the *Encyclopedia of Sociology* Vol. 2 (McMillan Reference: New York, 2nd edition 2000) pp. 981-987 informs that the aggravated violence exhibited by youth in general reflects the values of the society at large. Young people like the accused and his late wife had learnt their way from the society. To this end, concerted efforts must be made to ensure zero tolerance to gender-based violence in our country. The common law right of a husband to use corporal punishment on an "errant wife" as explained in the *Encyclopedia of Sociology* (supra) has never been a part of our laws. Nevertheless, people tolerate violence such as slapping, kicking and other forms of corporal punishment directed towards a spouse at home, but they wouldn't be so tolerant if the same happened say in the office or any other public place. If that purportedly normal practice is tolerated today, chances are, the next generation will take the practice to another level from corporal punishment to knifing. This brings me to the aggravating and mitigating factors. The learned State Attorney Mr. Godfrey Mramba has beseeched this court to impose a sentence that would send a message to young people out there that violence against women and children especially that which leads to loss of life is intolerable. Mr. Mramba has reminded this court further that Article 14 of the Constitution of the United Republic of Tanzania of 1977 calls for protection of the right to life for all. The learned Defense Counsel Ms. Happiness Sabatho, on the other hand, has pleaded with this court to consider that the accused is a young man without any record of criminality and that he is remorseful and deeply regrets having killed the deceased who was his wife. The learned Advocate added that since the accused person is still young he can learn through lesser forms of punishment. I have taken into consideration both aggravating and mitigating factors by the learned State Attorney and the learned defense counsel respectively. Premised on the facts read out loud a moment ago, there is no doubt that the accused person's act of stabbing the deceased with a knife on the stomach was gruesome and inhuman. He took away the life of the innocent young woman. An eighteen-year-old daughter who still craved to live with her parents. As narrated by the learned Senior State Attorney in the facts of the case, having experienced frequent violence from the accused, the deceased had gone back to live with her parents, pending issuance of a talac (talaka) by the accused something that he was unwilling to see happening peacefully. I must say also that although the accused person looks remorseful, what he committed paints a picture of a very cruel personality. It is disturbing

to think of a situation where one's spouse who has been living with her parents is met in the street and stabbed to death with a knife. What if she was living under the same roof with the accused? I think she would have been burnt to ashes never to be seen anywhere on this planet called earth. As alluded to above, our law provides that the punishment for manslaughter is life imprisonment. Scholars and researchers have proposed that manslaughter be divided into such categories as Unlawful Act Manslaughter (UAM), Gross Negligence Manslaughter (GNM) and Reckless Manslaughter (RM) to ease the sentencing process depending on gravity of the manslaughter in question. See Matthew Gibson and Alan Reed "Reforming English Homicide Law: Fair Labelling Questions and Comparative Answers" Chapter 3 in Reed, Allan and Michael Bohlander (ed) *Homicide in Criminal Law: A Research Companion* (Routledge, 2nd Edition 2020). In Tanzania, as in most of the commonwealth jurisdictions, there is no such categorization yet. Consequently, for purposes of sentencing, I must seek guidance from the Tanzania Sentencing Manual and abide to case law by the Apex Court of our country namely the Court of Appeal of Tanzania. In the case of *Moses Mungasian Laizer @Chichi* [1994] T.L.R. 223 the Court of Appeal of Tanzania in substituting conviction and sentence for murder with that of the lesser offence of manslaughter had the following to say on sentence: "As for the sentence to be imposed the appellant used a knife for killing the deceased. The use of a knife in a fight is always a telling factor against an accused person. The appellant is sentenced to ten years in prison." (Emphasis added) In the case of *Richard Venance Tarimo v. Republic* [1993] T.L.R.142 the appellant was convicted of the murder of his wife and sentenced to death. The Apex Court had this to say while substituting the death sentence: "On the question of sentence, we agree with Mrs. Lyimo that this was a wicked assault on the unfortunate woman, and we also agree that the sentence to be imposed must reflect this. With all these factors in mind, we sentence the appellant to fifteen years imprisonment." (Emphasis added) While in the first case above the appellant was fighting with fellow men, in the second case the deceased was a woman. In the instant matter, likewise, the accused stabbed fatally a helpless young woman without any indication that she would fight back. The learned State Attorney Mr. Mramba has passionately addressed this court on the need to send a deterrence message to young people out there. No doubt, what the accused person has committed is highly deplorable. Nevertheless, I have been told that he is young and a first offender. He has no record of criminality. He has also claimed that he has learnt useful lessons in remand custody and promises to become a law-abiding citizen in the future. He deserves some leniency. All said and done, the accused OMARY SALUM HAMISI SADIKI is hereby sentenced to serve a term of Fifteen (15) years imprisonment. It is so ordered JUDGE 07/11/2022 Court Ruling delivered in the open court in the presence of Mr. Godfrey Mramba, State Attorney, Ms. Happyness Sabatho, Advocate for the Accused and the accused person Page 7 of 8 Court The right to appeal to the Court of Appeal of Tanzania duly explained. E.I. LALTAIKA 07/11/2022 Page 8 of 8

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