

TANZANIA / JUDGMENT

republic vs francisco kivamba

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UNITED REPUBLIC OF TANZANIA IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA IRINGA DISTRICT REGISTRY ATIRINGA CRIMINAL SESSION CASE NO. 117 OF 2022
THE REPUBLIC VERSUS FRANCISCO KIVAMBA

JUDGMENT

Date of Last order: 24.07.2023 Date of Ruling: 28.07.2023 A.E. Mwipopo, J. Francisco Kivamba, the accused person, is charged with the offence of manslaughter contrary to section 195 (1) of the Penal Code/ap. 16 R.E. 2022. Particulars of the offence in the information reveal that on 25th August, 2022, at Mawambala Village within Kilolo District and Iringa Region, the accused person unlawfully killed Jackson Mlangwa. When the information was read to the accused, he pleaded not guilty. The prosecution paraded five witnesses to prove their case. i Philipo Mlangwa (PW1) was the first prosecution witness to testify. He said he is a resident of Mawambala village within Kilolo District in the Iringa Region. He was living with his wife and children, including Jackson Mlangwa, the deceased in this case. It was his testimony that on 25.08.2022 around 08:00 hours, the Hamlet Chairman, namely Gervas, together with Leila Msungu, visited his house and told PW1 that Leila Msungu had seen his son namely Jackson Mlangwa had clothes of Leyla's child. Hamlet Chairman and Leyla Msungu took Jackson Mlangwa to the village office. PW1 followed them to the village office. Gasper Kikoti, the Village Executive Officer, received Jackson at the village office. While at the office, the accused person came with a mace and started to beat Jackson Mlangwa in the head, abdomen and hands. They found the village Executive officer, Gasper Kikoti, at the village office. PW1 asked the accused person to stop beating the deceased, and the accused person stopped. PW1 said that the village leaders decided to take Jackson Mlangwa to the police station by using a hired motorcycle. After some time, the village Executive officer informed PW1 that O.C.S. had called and asked PW1 to go to the police station. PW1 went to the Mtitu Police station and met with O.C.S. O.C.S. told PW1 that his son Jackson was injured and had to take 2 him to the hospital. Police issued a letter, and PW1 took Jackson Mlangwa to the Uhona Hospital. The condition of Jackson Mlangwa deteriorated, and he was referred to Ipamba Hospital for treatment the following day. The deceased health continued to deteriorate, and the Ipamba Hospital referred the deceased to Iringa Region Referral Hospital. PW1 took Jackson Mlangwa to Iringa Regional Referral Hospital on the same day, 26.08.2022. On 29.08.2022, Jackson

Mlangwa died while continuing with treatment at Iringa Region Referral Hospital. A nurse informed PW1 about the death of Jackson Mlangwa's on 29.08.2022, and he was shown the deceased body. PW1 said he knows the accused person as they reside in the same village. He identified the accused person as Francisco Kivamba. Upon cross examination, PW1 said Hamlet Chairman/ Leyla Msungu and Other people went to his house. During PW1's conversation with Hamlet Chairman and Leyla Msungu, the deceased tried to run. People chased the deceased. The accused person was not at PW1's house when the deceased tried to escape. People arrested the accused person, and they beat him after arresting him. The deceased was taken to the village office. PW1 said he did not tender the letter for treatment given by the police. 3 The second prosecution witness is Gasper Wilson Kikoti (PW2). He testified that he resides at Mawambala village within Ilkumbi Ward in Kilolo District. He is a peasant and acting Village Executive Officer (Ag, V.E.O.). PW2 said on 25.08.2022, he received a phone call from Leyla Msungu informing him the uniform of his child was stolen, and he found it in the deceased's possession. PW2 told Leyla to go and see the Hamlet Chairman of their area. The area was Kiheza "B", and the chairman of the hamlet was Kepha Kivamba. After three hours, PW2 saw people coming to the village office. He identified Eugen Kadinda, a civic militia, Leyla, Hamlet's Chairman and other people he doesn't remember. They went to the village office with the suspect, namely Jackson Mlangwa. As a big group gathered, some entered the office, and others remained outside. The deceased was in good condition when he arrived at the village office. Then, the accused person took the mace and beat Jackson Mlangwa in the head and legs forcing him to name his fellow criminals. PW2 said he told the accused person not to beat Jackson Mlangwa. The accused person answered that PW2 is lenient to thieves. PW2 wrote a letter to send the suspect to the police. He handed the letter to Eugene Kadinde and asked him to take the deceased to the police station. The deceased was alive with some pain due to the beatings 4 when he was taken to the police station. PW2 said he did not see another person beating Jackson Mlangwa apart from the accused. PW2 stated that later on, he was informed by the police that the suspect was sent to the hospital for treatment. PW2 said he knows Fransisco Kivamba as he is a resident of their village and a village council member. Francisco Kivamba is the accused person. In cross examination, PW2 said that it is true that the accused person did beat the deceased with a mace at the village office. The deceased was suspected of stealing a uniform of Leyla's child. It is correct that PW2 sent the deceased to the police station for further action. When the deceased arrived at the village office, he was fine. The deceased even talked to PW2 when he sent the deceased to the police station. They hired a motorcycle to carry the deceased to the police station. PW2 said that he was not present when police were recording the deceased statement. When Jackson Mlangwa was arrested and interviewed by the Hamlet chairman at his parent's house, PW2 said he was absent. PW2 stated that he has no conflict with the accused person. Kepha Kivamba (PW3), who is the chairman of Kiheza "B" Hamlet in Mawambala Village, testified that on 25.08.2022 around 08:00 hours, he received a phone call from Leyla Msungu asking where he was. PW3 s answered that he was home, and she told PW3 she was coming. Leyla Msungu went to PW3's house and complained that some of her clothes and hen were stolen. She said she had seen her child's school uniform (tracksuit jacket) with Jackson Mlangwa. PW3 and Leyla Msungu went to the house of Philipo Mlangwa, where Jackson Mlangwa lives. They met with Philipo Mlangwa and Jackson Mlangwa.

PW3 informed Philipo Mlangwa that his son Jackson Mlangwa was accused of stealing a uniform from Leyla's child. Jackson Mlangwa was ordered to bring the stolen uniform (tracksuit jacket), and he brought it. PW3 asked Jackson Mlangwa where he got the tracksuit jacket, and he answered that he picked it up on the way. PW3 interviewed him further, and Jackson Mlangwa admitted that he took the clothes at Leyla's house. During the conversation, PW3, Leyla Msungu, the suspect's father (PW1), and the suspect's mother were present. Leyla Msungu asked Jackson Mlangwa to return all things he had stolen. As the conversation was heated, people gathered. People were angry as stealing incidents increased in the area. Seeing people angry, Jackson Mlangwa started to run away, and people chased him, calling him a thief. People arrested Jackson Mlangwa. PW3 went where Jackson Mlangwa was captured and tied his hands with a rope. While arresting him, Jackson Mlangwa was not beaten. PW3 took Jackson Mlangwa to his parent's house. The number of people in the area continued to increase, and PW3 called Eugen Kadinda, a civic militia (mgambo). They took Jackson Mlangwa inside his room for safety. Several stolen goods were found there. People wanted to take their properties found from the suspect's room, but PW3 told them to go to the village office first. PW3 called a tricycle and took stolen goods and the suspect to the village office. People went to the village office. PW3 handled the suspect and stolen items from the village Executive Officer. Suddenly the accused person, who came with a mace, started to attack the suspect while asking him to say his company in stealing things. PW3 said he knows Francisco Kivamba as his neighbour living in the hamlet. Jackson Mlangwa is now dead. Francisco Kivamba is the accused person. In cross examination, PW3 said a civic militia took Jackson Mlangwa from his parents' house to the village office. The civic militia was not carrying any weapon. It is true that while the conversation was going on, the deceased tried to run away, and people arrested him. PW3 was present when people arrested the deceased. He took Jackson Mlangwa to his parent's house, and people continued to gather. People entered Jackson Mlangwa's room and found some of the stolen goods. At that time, the 7 suspect was outside. Police recorded PW3's statement at the village. He did not say in the statement that people attacked the deceased. The police officer with No. G. 3218 D/Cpl Lazaro (PW4) testified that on 31.08.2022, he Went to Mawambala village within Ukurnbi Ward in Kilolo District to inspect the scene of the crime of murder incident where Jackson Mlangwa died. He drafted a sketch map of the scene of the crime. When he tried to tender the sketch map of the crime scene, the defence counsel objected to its tendering because the content of the sketch map was not read over and explained to the accused person during committal proceedings. The Court upheld the objection as the committal proceedings do not show if the content of the sketch map was read over and explained to the accused person. PW4 said that he also recorded the statement of witnesses, including Hamlet's chairman and village chairman. The last prosecution witness is the police officer with No. F. 5184 Sgt Godfrey (PW5). He testified that on 25.08.2022, while at Mtitu Police Post, a person injured was brought by civic militia. PW5 told the civic militia who brought the person to take that person for treatment before opening the investigation file. The person injured was unable to talk, and the civic militia informed PW5 that the person's name was Jackson Mlangwa, and people assaulted him. PW5 issued a PF3 so that Jackson Mlangwa could go to the hospital for treatment, The PF3 shows the name of the injured, the police station or post issuing it, and the police officer who issued it Jackson Mlangwa went to the hospital. On

29.08.2022, the person who introduced himself as the father of Jackson Mlangwa called and informed PW5 that Jackson Mlangwa was dead. As Jackson Mlangwa is dead, the PF3 was not returned to the police. In cross examination, PW5 said that it is correct that on 25.08.2022, a person who was injured and unable to speak was brought by civic militia to the police station. PW5 was informed about the injured person by the civic militia, namely Eugene Kadinda. Eugene Kadinda said that people assaulted the deceased. This was the end of the prosecution case. The Court did find in its ruling that the prosecution case is made, and the accused person has to enter a defence. The accused person testified on oath and called one witness in his defence. In his testimony, Francisco Kivamba (DW1) said he is a member of the Mawambala Village Council and Chairman of the Village Economy, Planning and Finance Committee. His committee is responsible for auditing village revenues and expenditures and preparing quarterly village financial reports to be presented at the village general meetings. DW1 said that also he was assisting the village chairman in his duties. DW1 denied to beat the 9 deceased with a mace, as PW1, PW2 and PW3 testified it. He said that the deceased was in bad condition when he was brought to the village office. The deceased appeared to be beaten and was bleeding on his head. DW1 said he asked Eugen Kadinda and PW3 why the suspect was injured. They told him the suspect tried to escape after being restrained, and people chased him. One person threw a piece of brick which hit the suspect on the head, and he fell to the ground. People chasing him caught the suspect and started to beat the suspect. In his testimony, DW1 said he was the one who helped by asking PW2 to write a letter for referring the deceased to the police station immediately, and he hired the motorcycle of Yericko Lusoko to take the deceased and civic militia to the Mtitu police station. On 29th August, 2022, DW1 was informed by the village chairman that Jackson Mlangwa was dead. The deceased body was brought back to the village on 30th August 2022 and was buried at the village. DW1 said the case was fabricated because he had a conflict with Gasper Kikoti (PW2). As chairman of the Economic, Planning and Finance Committee of the Village, DW1 found PW2 was embezzling village revenues by hiding the revenue collection receipts. PW2 gave false evidence in Court so that he could be imprisoned and the matter of embezzlement be forgotten. DW1 added that PW3 is his paternal uncle (Baba Mdogo), who has a conflict with DW1's father over land ownership. PW3 accused DW1's father of taking a significant land portion in inheritance, and PW3 wanted DW1's father to give them part of the land. DW1 said that PW3 believed that his father got support from him. On the testimony of PW1 that he saw DW1 beating the deceased, DW1 said that PW1 testified that his son Jackson Mlangwa was a thief and was beaten by the people after they caught him while trying to escape. He stated it was PW2 who informed him that O.C.S. of Mtitu Police Post summoned him, DW1 said that he was not responsible for the death of Jackson Mlangwa. In cross examination, DW1 said that he is among 25 members of Mawambala village council and is the only one knowing that PW2 have embezzled village funds. He is the crucial witness in the embezzlement case. He informed the village Chairman, Ward Councilor and Ward Executive Officer, who are working on the accusation. DW1 said that it is true that Kepha Kivamba (PW3) and Eugene Kadinda told him that the deceased was beaten by people when he tried to escape. He did not say in his statement to the police that he had a conflict with PW2. There is no conflict between him and PW1. He heard the testimony of PW1. PW1 did not mention him among the people who assaulted the deceased. DW1 said

further that PW3 has a conflict with his father. He has no conflict with PW2. DW1 said he had a witness today who saw who assaulted the deceased. It is true that Jackson Mlangwa is dead and was buried. He didn't know the cause of his death as it was the doctor who treated him at the hospital. DW1 said he was indeed present at the village Office during the incident. At the village office, the deceased was not attacked by any person. PW1, PW2 and PW3 evidence is not the truth. DW1 said it was impossible to assault the deceased as the village chairman, PW2, civic militia, and PW1 were present. Steven Emilio Kitindi (DW2) testified as the 2nd defence witness. He said he is a resident of Mawambala Village and the Village Chairman. On 25th August, 2022, around 08:00 hours in the morning, he received a phone call from PW3 informing him that Jackson Mlangwa was found with stolen properties in his hamlet. Mawambala village has eight hamlets. DW2 ordered the civic militia to accompany PW3 to bring the suspect and the stolen properties to the village office. As the DW1 told him he was going to the office, DW2 ordered DW1 to handle the situation in the office by assisting PW2 and the civic militia. DW2 said after he arrived at the village 12 office, he found a group of approximately 60 people outside the office. The suspect was still inside the bajaji, with properties alleged to be stolen. The suspect appeared tired, could not get out of the tricycle, and was in bad condition. After discussion, they hired a motorcycle to take the suspect to the police station. DW2 said he knows there is a conflict between PW2 and the accused person over their duties. In July, 2022, the village revenue receipt book with six receipts, which PW2 kept while he was acting Village Executive Officer, was lost. The accused person asked PW2 about the receipt book, and PW2 failed to explain. As a village chairman, DW2 discussed with the new Village Executive Officer, Hamad Msigala, who reported in November, 2022 and decided to report the matter to the Ward Executive Officer. In cross examination, DW2 said he knows PW1, PW2, and PW3. He said he couldn't tell if PW2 falsely accused the accused person of causing the deceased's death. DW2 said he asked PW1 and PW2 who did assault the deceased. PW1 said the deceased was beaten by a stone when he tried to escape, and PW2 told DW2 it was the accused person who attacked the deceased by using a mace at the village office. DW2 said that he was not present when the incident occurred. As a result, he did not see who attacked the deceased. DW2 said he don't know if PW1 and Francisco 13 Kivamba have any conflict. He knows there is a conflict between PW3 and the accused person over shilling 80,000/=" which PW3 received from selling the farm, but he did not submit it to the village accountant. When he arrived at the village office, he found the accused person already at the village office. He doesn't know who assaulted the deceased. Eugen Kadinda and Brown Mgwilanga took the deceased to Police Station. DW2 said he saw the deceased was carried in a tricycle and was in bad condition. This was the end of the defence case, and the defence counsel closed their case. The evidence adduced by the prosecution's witnesses proved that the deceased, namely Jackson Mlangwa was dead. The testimony of Philipo Mlangwa (PW1), the deceased father, shows that the deceased was assaulted by citizens, including the accused person, following the: theft allegation. He was taken to the police station by civic militia Eugene Kadinde while still alive. Later on, he was informed by the police that his son was in bad condition and he had to take him to hospital. PW1 took the deceased to Uhona Hospital for treatment. The deceased condition deteriorated, and on the following day deceased was referred to Ipamba Hospital. PW1 took the deceased to Ipamba Hospital for treatment without improvement. Ipamba Hospital referred the deceased to Iringa

Region 14 Referral Hospital on the same date, and PW1 took the deceased to Iringa Region Referral Hospital. The deceased died on 29.08.2022 while continuing treatment at Iringa Region referral Hospital. PW1 said that the nurse showed him the deceased body. The PW1 evidence is supported by the testimony of DW1 that he saw the deceased at the village office in bad condition. He said that the deceased appeared to be beaten and was bleeding. He said that on 29th August 2022, he was informed that the deceased died. The deceased body was brought back to the village and was buried on 30th August, 2022. Although there is no report of the examination of the deceased body, which prosecution witnesses tendered, death may be proved even without medical evidence. The position was stated in the case of Mathias Bundala vs. Republic, Criminal Appeal No. 62 of 2004, Court of Appeal of Tanzania at Mwanza, (unreported), it was held that:- ' We agree with Mr. Galati that the cause of the death of the deceased has never been established to this day. However, our brief response to this shortcoming is that it is not the requirement of the law that the cause of death must be established in every murder case, We are aware of the practice that death may be proved by circumstantial evidence even without the production of the body of 15 the alleged dead person: See, for instance, LEONARD MPOMA K R.,

[1978] T.L.R. No. 58." Even in the present case, the available evidence is sufficient to prove without doubt that the deceased is dead and his death was not natural. Injuries sustained by beatings caused it. The next question to be determined is the person responsible for causing the deceased death. The prosecution has charged the accused person with the offence of manslaughter contrary to sections 195 (1.) and 198 of the Penal Code, Cap. 16 R.E. 2022. A person is guilty of manslaughter offence who, by an unlawful act or omission, causes another person's death. The unlawful omission is defined by section 195 (2) of the Penal Code that it 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 grievous bodily harm. The law provides for the causation of death in sections 203 (a), (b), (c), Cd) and (e) of the Penal Code. The section reads as fol lows "203. A person is deemed to have caused the death of another person, although his act is not the immediate or sole cause of death, in any of the following cases- 16

- (a) if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death; in which case it is immaterial whether the treatment was proper or mistaken if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;
- (b) if he inflicts bodily injury on another, which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed appropriate precautions as to his mode of living;

- (c) if by actual or threatened violence he causes that other person to perform an act which causes the death of that person, the act being a means of avoiding the violence which in the circumstances would appear natural to the person whose death is so caused;
- (d) if by any act or omission he hastens the death of a person suffering under any disease or injury which, apart from that act or omission, would have caused death;
- (e) if his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or another person." From the above cited section, a person is deemed to have caused the death of another person, although his act is not the immediate or sole cause of death if he inflicts bodily injury to another person in consequence 17 of which causes the death of that other person or he hastens the death of a person suffering under any disease or injury which, apart from that act or omission, would have caused death. As the accused is indicted for manslaughter, the prosecution is required to prove unlawful killing. The said burden never shifts from the shoulders of the prosecution. It is not the duty of the accused person to prove his innocence. The standard of proving the criminal case is beyond any reasonable doubt. Where there is doubt in the prosecution's case, the same shall be resolved in favour of the accused person. In the case of *Christian Kaale and Another vs. Republic* [1992] TLR 302, it was held by the Court of Appeal that the prosecution has to prove the charge against the accused beyond all reasonable doubt, and an accused ought to be convicted on the strength of the prosecution case. In the case at hand, the prosecution case depends on the evidence of eyewitnesses. PW1, PW2 and PW3 testified to see the accused person attacking the deceased using a mace at Village Office. PW1 and PW3 were present from the time the deceased was apprehended for stealing accusation to the time he was taken to the village office. In his evidence, PW1 said the deceased was assaulted by people when he tried to escape 18 after he was apprehended for stealing accusations. After he was caught, people attacked him. On the other hand, PW3 said that the deceased was arrested by people when he tried to escape, but he was not assaulted. PW1 and PW3 stated that the deceased was taken to the village office in good health. PW2 testimony shows that he received the deceased person in the village office while in good condition. He said that he was able to ask some questions to the deceased. Suddenly, the accused person attacked the deceased using a mace while asking him to name his company in stealing property. The law is settled that visual identification evidence is the weakest kind. Thus, it must be watertight before it is taken as a basis of conviction. In the case of *Waziri Amani vs. Republic*, [1980] TLR 250, the Court of Appeal stated that no court should act on evidence of visual identification unless all possibilities of mistaken identity are eliminated, and the Court is delighted that the evidence is absolutely watertight. In the case of *Chacha Jeremiah Murimi and 3 Others vs. Republic*, Criminal Appeal No. 551 of 2015, Court of Appeal of Tanzania at Mwanza, (unreported), the Court of Appeal while discussing the possibility of mistaken identity in visual identification, provided some guidelines for 19 eliminating the possibility of mistaken identity. The Court held that: "The most commonly fronted are: How long did the witness have the accused under observation? At what distance? What was the source and Intensity of the light if it was at night? Was the observation impeded in any way?

Had the witness ever seen the accused before? How often? If only occasionally had he any special reason for remembering the accused? What interval has lapsed between the original observation and the subsequent identification of the police? Was there any material discrepancy between the description of the accused given to the police by the witnesses when first seen by them and his actual appearance? Did the witness name or describe the accused to the next person he saw? Did that/those other person/s give evidence to confirm it?" In the present case, the incident occurred in the morning, around 08:00 hours. It means there is enough sunlight. PW1, PW2 and PW3 said that they know the accused very well, as they all are Mawambala Village residents. These witnesses said that at the village office, the accused person attacked the deceased with a mace while asking for the deceased company to commit the crime, and they named him. I'm satisfied that their identification has no doubt. The accused person denied, in his defence to assault the deceased with a mace. He said the deceased arrived at the village office already 20 injured and bleeding and was informed that he was hit by a brick in the head when he tried to escape after PW3 apprehended him. He said that the case was fabricated by PW2 and PW3 because there was a conflict between them. DW2's evidence also supported the accused proof that there was a grudge between PW2 and PW3 against the accused person. However, PW1, PW2 and PW3's testimony shows that they saw the accused person attacking the deceased with a mace at the village office. These witnesses said they stopped the accused person from attacking the deceased. I have seen these witnesses testifying in Court, believing they are witnesses of truth. There is nothing to make this Court doubt their credibility. Every witness is entitled to credence and to have their evidence believed by the Court. This position was stated in the case of Goodluck Kyando vs. The Republic [2006] TLR 363, where it was held that:- "...it is trite law that every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness." In the present case, there is no compelling reason not to believe the testimony of PW1, PW2 and PW3. The accused person said he has no conflict with PW1. This means PW1 has no basis for PW1 to fabricate evidence against him. The accused person said that PW2 and PW3 21 evidence is fabricated due to conflict. He brought DW2 to support his evidence that there is a grudge between the accused person and PW2 and PW3. The accused person said that PW3 is his uncle, and there is a conflict over land ownership between PW3 and his father, who are blood brothers. However, DW2 said there was a conflict between the accused person and PW3 as PW3 failed to submit to the village accountant shillings 80,000/=, which was village revenue for the land sold. It means there is a contradiction in the testimony of the accused person and DW2 regarding the cause of conflict between PW3 and the accused person. Further, PW3 was not cross examined at all on the issue of conflict between him and the accused father. About his conflict with PW2, the accused person said that he found PW2, while acting as Village Executive Officer, embezzled village revenues in his audit. He said PW2 is using this case to stop him from testifying. However, his evidence and that of DW2 show that the accusation is still being enquired, and they were sent to be handled at ward level. During cross examination, nothing was asked about embezzlement. The only question asked was about any conflict between the accused person and PW2, which PW2 denied

having any dispute. 22 Further, in his testimony, DW2 said that he arrived at the village office after the deceased had already been brought. While at the village office, he saw the deceased condition was horrible, and he was bleeding. He asked who assaulted the deceased. He got two answers from two different people. One told him that the deceased was attacked by people when he tried to escape. The second person informed him that it was the accused person who assaulted the deceased by using a mace. This evidence supports PW1, PW2 and PW3 that the accused person attacked the deceased, and even DW2, the village chairman, was informed. As I stated earlier herein, a person is deemed to have caused the death of another person, although his act is not the immediate or sole cause of death, if he inflicts bodily injury to another person in consequence of which causes the death of that other person or he hastens the death of a person suffering under any injury which, apart from that act or omission, would have caused death. There is a possibility that people assaulted the deceased after they apprehended him when he tried to escape and caused him injuries. However, the evidence shows that the accused person also injured the deceased. Since the accused person inflicted injury on the deceased, he has caused the death of the accused person, even though the harm he inflicted might not be the sole cause of the deceased death. 23 Therefore, I'm satisfied that the prosecution evidence proved without a doubt that the accused person unlawfully attacked the deceased with a mace at the Mawambala Village Office and caused his death. Thus, I'm convicting the accused person, namely Francisco Kivamba, for the Manslaughter Offence contrary to sections 195 (1) and 198 of the Penal Code, Cap. 16 R.E. 2022, accordingly. A.E. MWIPOPO JUDGE 28/07/2023 PREVIOUS CONVICTION AND AGGRAVATING FACTORS State Attorney: We have no previous conviction record of the accused person. However, we are praying for the severe sentence. The force used to attack the deceased was excessive. He attacked the deceased by using a mace and he directed the blow in his the head. Head is vital body part. The accused person did take law in own hand. He was the leader of Mawambala village. Instead of stopping people from taking 24 the law in their own hands, he was the one who attacked the suspect and caused his death. He has taken the life of the deceased who was aged 23 years. The father of the deceased is aged and depends on the deceased. Since the deceased was still young, he had a chance of becoming a better person. The accused person attacked the deceased in the presence of the deceased father. This has affected mentally the deceased father. The accused person has taken the resources of the court by deciding not to plead guilty to the offence. We pray for severe sentence to be lesson to other not to take the matter in their own hands. MITIGATION Defense counsel: We are praying for lenient sentence to the accused person. The accused person is first offender with no criminal record. The accused person has dependants. He has a wife and 4 children who are still studying. They all depends on him. The accused person is taking care of 3 children who are orphans and they depend on him. His father who is very old also depends on him. 25 The accused person is still young, he is aged 39 years, He is still the workforce of the family and the nation. The deceased prayed part to his death. He was thief. The accused person was not the only person who attacked the deceased. People also attacked the deceased. We do not know who caused the fatal blow. The accused person has been showing good behavior. He is out for bail for almost

8 months but he was never found with any other offence during this period and he did not jump bail. The accused person was in custody for 3 months and it was sufficient punishment to him. He has learnt his lesson. The accused person is evangelist of baptist church at Mawambala village. We pray for the court to give the accused person non custodial sentence with or without condition under section 38(1) of the Penal Code Cap. 16. R.E. 2022. Custodial sentence will not serve the purpose to the accused person. SENTENCE I have heard aggravating and mitigation factors. It is true that the accused person is the 1st offender with no criminal record he has 26 dependants. He is still young and he is the workforce of the nation since he still could produce. I also have considered his good behaviour of not committing any offence during the time he was out on bail and for not jumping bail during his bail period. I know that the act of people to take the law in their own hands in Iringa region is rampant. The circumstances of this case was provocative. The facts show that incidents of stealing has increased in the village and the deceased person was found with stolen properties suggesting that he was the thief. The accused person did not plea guilty to the offence as the State Attorney said. However, the accused enters plea of guilty when he is willing and the court is here to do justice to all. It was his right, to plea not guilty to the offence. After considering all of the factors, I think custodial sentence is not the better punishment to the accused person. For that reason, I discharge the accused person on condition to do community work for the period of 4 months. The community service officer shall assign work to the accused person and shall give him other conditions and terms to be adhered by the 27 accused person during this period of community service. It is so ordered accordingly. 4W A.E. MWIPOPO v JUDGE 28/07/2023 28

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