

TANZANIA / JUDGMENT

republic vs magori so mgosi maki

2024 tzhc 860 28 february 2024

COURT
TZHCDECIDED
28 February 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MUSOMA SUB-REGISTRY AT TARIME CRIMINAL SESSIONS CASE NO. 60 OF 2023 REPUBLIC VERSUS MAGORI S/O MGOSI MAKI RULING ON SENTENCE Date of Last Order: 28/02/2024 Date of Sentence: 28/02/2024 Katana bo, J.: On 28/02/2024 the information for the offence of Acts Intended to Cause Grievous Harm contrary to section 222(a) of the Penal Code, Cap. 16 R.E. 2022 (hereinafter the 'Penal Code') was read over to the accused herein. The accused unequivocally pleaded guilty to the said information. Following his own unequivocal plea of guilty, this court convicted the accused for the offence of Acts Intended to Cause Grievous Harm contrary to section 222(a) of the Penal Code, Cap. 16 R.E. 2022. Having convicted the accused, the court invited counsels representing both parties to address the court on matters they consider relevant and that will have bearing on the sentencing of the accused. The learned counsels discharged their duties as officers of the court. Therefore, this court is required to determine an appropriate sentence for the offence committed by the accused. The relevant law on the sentencing the accused is found in section 222(a) of the Penal Code which provides that "Any person who, with intent to maim, disfigure or disable any person or to do some grievous harm to any person or to resist or prevent the lawful arrest or detention of any person- (a)unlawfully wounds or does any grievous harm to any person by any means whatsoever; (b-g)-N/A is guilty of an offence, and liable to imprisonment for life." The above section provides a punishment of life imprisonment for a person who is convicted of the offence of Acts Intended to Cause Grievous Harm. However, this is the maximum sentence, but not a mandatory sentence to be imposed on a convict. The court upon thoughtful and prudent consideration, depending on the nature and gravity of the offence, may exercise its discretion and inflict a reasonable sentence. The undisputed facts as presented by the prosecution and evidence on record indicate that the offence was committed by using a lethal weapon, a machete. This is supported by a medical examination report (a 'PF3' of Pendo 2 Kisiri Marwa) dated 4th April 2023, admitted as exhibit 'P1' which indicates that multiple cut wounds were observed on the body of the victim. Further, it is on record (see exhibit 'P1') that the accused slashed the victim several times including on the head and hands and inflicted grave wounds most measuring two (2) centimetres deep. The Accused also amputated the victim's one finger namely; the right hand thumb. The infliction of wounds on the head also involved the skull. Both ears of the victim were also seriously wounded. It is crystal clear that the accused fatally

wounded the victim's sensitive and vulnerable parts of the body. The said facts establish the gravity of the offence and thus exacerbate the offence committed by the accused. This is heightened by taking into account the fact that the attack on the victim caused permanent incapacitation on her right hand. Moreover, the offence was committed for no good reason. The only reason for the attack laid bare before this court, is that the accused was angered because the victim made it public that the accused stole from her TZS 33,000/=. This is baffling to be the accused's justification for assailing the victim, and lethally wounding her as described herein above. 3 In mitigation, it is noted that the accused is the first offender. The accused is also remorseful for the offence he committed. The court also takes into account the fact that the accused also pleaded guilty to the offence of Acts Intended to Cause Grievous Harm contrary to section 222(a) of the Penal Code, Cap. 16 R.E. 2022, and thus saved time and resources for both the prosecution and the court. He also surrendered himself to the police after committing the said 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 was arrested (04/04/2023) to date, which is more than ten months. Now therefore, as indicated above, the law in respect of the offence of Acts Intended to Cause Grievous Harm contrary to section 222(a) of the Penal Code, Cap. 16 R.E. 2022 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 judiciously. This court, after considering both aggravating and mitigating factors stated herein above, the custodial term of the sentence, under the circumstances of this case would have been twelve (12) years of imprisonment. However, 4 the court takes into account the fact that the accused surrendered himself to the police after committing the offence. The accused also pleaded guilty at the first opportunity in court proceedings, thus the twelve (12) years that the court considered imposing on the accused, are reduced by one-third and thus remains eight (08) years of imprisonment. The court of appeal cases of *Charles Mashimba v. Republic* [2005] TLR 90 and *Swalehe Ndungajilungu v. Republic* [2005] TLR 94 are relevant. Considering other aggravating and mitigating factors, including the accused's personal circumstances (i.e. young age and previous good character), as expounded herein above, the remaining eight (08) years are reduced further, by one year and 36 days. Therefore, six (6) years, ten (10) months and 24 days of imprisonment remain. The court also takes into account the time spent by the accused in remand since his arrest on 04/04/2023 to date, which is ten (10) months and 24 days. Hence, the remaining six (6) years, ten (10) months and 24 days are thus reduced by the said time spent in remand by the accused since his arrest (see the case of *Swalehe Ndungajilungu v. Republic* [2005] TLR 94). Therefore, this court sentences the accused to serve Six (6) years of imprisonment from the date of this order. 5 Moreover, in terms of sections 25 and 31 of the Penal Code, Cap. 16 R.E. 2022 and section 348(1) of the Criminal Procedure Act, Cap. 20 R.E. 2022, the accused shall pay the victim (Ms Pendo Kisiri Marwa) a compensation of Tanzania Shillings Three Million Only (TZS 3,000,000/=) for the lethal injuries suffered. It is so ordered. Right of appeal explained. K. I. Kafanabo Judge 28/02/2024 The ruling was delivered today in the presence of Ms. Damari Nyange, State Attorney, representing the Republic, and in the presence of Mr. Shedrack Belbembe (Advocate for the accused). The accused was also present and in custody. 28/02/2024 6

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