

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF MANYARA AT BABATI CRIMINAL SESSIONS CASE NO. 22034 OF 2024 REPUBLIC VERSUS BONIPHACE FAUSTINE SENTENCE 21st & 28th August, 2024 KAMUZORA, J Boniphace Faustine being represented by Mr. Tadei Lister, learned advocate was aligned before this court for the offence of murder but it was reduced to a lesser offence of manslaughter. When an information of manslaughter was read to him by Mr. Raphael Rwezaula, learned state attorney, Boniphace Faustine pleaded guilty and was convicted by this court for the offence of manslaughter contrary to sections 195 and 198 of the Penal Code [Cap 16 R.E 2022]. He is now a convict and the matter is coming for assessing and passing sentence against him. Briefly, according to the facts narrated by the learned state attorney and the evidence on record, on 12/3/2024 at night hours at Mewadani village Page 1 of 7 within Mbulu district in Manyara region, the deceased was at the convict's grocery drinking some liquor while the convict was sleeping. A quarrel arose at the grocery and the convict was awakened by his wife to assist in calming down the deceased. Upon arrival at the scene, the deceased started fighting the convict and the convict stabbed the deceased on the right part of the neck and at the back. The deceased was rushed to Mewadani dispensary but he died thereafter. The matter was reported at Haydom police station on 13th March, 2024 and police officers inspected the scene and drew the sketch map of the crime scene. The deceased's body was taken to Lutheran Church referral hospital and examined on 16th March, 2024. The post mortem examination report shows that the cause of death was multi organ failure and brain hypoxia which resulted from traumatic injury on the right common carotid artery. The convict was arrested on 13th March, 2024 and sent to Haydom police station and upon interrogation, he confessed to have caused the deceased's death. On the same date, the convict was taken before the justice of peace and confessed to have caused the deceased's death. The postmortem examination report, sketch map of the scene, extra judicial statement and the convict's cautioned statement were tendered and admitted as exhibits PE1, PE2, PE3 and PE4 respectively. Page 2 of 7 When Mr. Rwezaula, learned State Attorney was asked to address the court on the aggravating factors, he submitted that there were no previous criminal records against the convict. He however prayed that when sentencing the convict, the court should consider that the convict used a dangerous weapon which is a knife and the injuries were inflicted on the dangerous parts of the body namely; the right side of the neck which had main blood artery to the head and the deceased's right back. The learned state attorney further submitted that the deceased was still young and dependable to the community and his family.

That, after committing the offence the convict fled away and did not assist the deceased to save his life. He urged this court to find that the offence falls under serious level of manslaughter which attracts 10 years to life imprisonment sentence. However, he was of the opinion that since the convict confessed to the offence at all time saving costs and time in prosecuting the case, he be sentenced to serve 20 years imprisonment. Mr. Lister mitigated for the convict and prayed for lenient sentence to be passed against the convict. He prayed for this court to consider that the convict is the first offender. That, the incidence was just an accident because on the night of incident, the deceased was acting violently and in course of Page 3 of 7 trying to calm him down, the convict injured him. He added that the convict has been remorseful for what happened for he never intended to cause deceased's death. That, the court should also consider the role prayed by the deceased because they tried to remove him from the scene but he returned and continued with the fight meaning that he contributed to his own death. He added that in the course handling the deceased, the convict was forced to use force since the deceased attacked him. That, the convict used a small knife which was in his keys to defend himself against the deceased. The defence counsel further prayed for this court to also consider the convict's statements tendered by the prosecution side which clearly elaborated the situation. That, the statements show that the convict stabbed the deceased once but he did not release him hence he stabbed the deceased for the second time. That, after the incident, the convict fled away to avoid being attacked by villagers but he was cooperative to the authorities and he confessed before this court for the offence saving the costs and time in prosecuting this case. The defence counsel also submitted that the convict is still young and has a wife and children. That, he was arrested on 13th March, 2024 and has Page 4 of 7 been in custody for about five months and 9 days. That, apart from the fight, there is evidence that both the convict and the deceased were drunk on the date of incident. He was of the view that the circumstance of this matter falls under low level manslaughter because the convict was defending himself. He therefore prayed for this court to pass sentence in considering low level of seriousness in the offence of manslaughter which attracts conditional discharge to four (4) years imprisonment. I have thoughtfully considered every fact brought before this court and the submissions by both counsel. Indeed, I agree that before the convict had stabbed the deceased there was a fight between them. According to the convict's extra judicial and cautioned statements (Exhibits PE3 and PE4), the deceased went to the convict's grocery and was causing trouble. The convict who was drunk sleeping at a time and was called by his wife to quell the trouble. Having arrived at the scene, the convict found the deceased sitting on top of a woman and when the convict asked the deceased to go away and the fight ensued between the two. People who were at the scene managed to separate the convict and the deceased and they were able to move the deceased away from the scene. The deceased returned back to the scene and caught up the convict Page 5 of 7 and started beating him up. The convict by this time was armed with a knife which he used to stab the deceased once but the latter did not let go of the convict hence, the convict stabbed the deceased for the second time. The deceased sustained fatal wounds that led to his death. I agree with the defence counsel that the circumstance of the matter shows that the convict was trying to defend himself against the deceased. It is without doubt that the deceased's conduct contributed largely to the fate that befell him. However, I am of the considered view that, the deceased's conduct does not completely

exonerate the convict from liability. He used a knife which is a dangerous weapon irrespective of the size of the knife. He also inflicted fatal wounds on the dangerous parts of the body namely the neck and the right back. In terms of Tanzanian sentencing guidelines, the circumstance in this case falls under low level manslaughter for the death was actuated by use of unreasonable force in self defence. Rightly as argued by the learned defence advocate, the highest level of punishment is 4 years of incarceration with the lowest being conditional discharge. However, in considering that the mitigation raised by the defence counsel and the fact that the convict was also drunk at the time of incident and was provoked by the deceased, I will not pass the highest sentence in Page 6 of 7 the low level. I therefore find three (3) years imprisonment as reasonable sentence in the circumstance of this case. However, taking into account that the convict readily confessed to the offence saving time and costs in prosecuting the matter, he is entitled to 1/3 deduction of the sentence of three years which is one year. This means that the convict would have been sentenced to two (2) years imprisonment but I have considered the time spent by the convict in custody awaiting trial from 13th March, 2024 when he was arrested to-date which is about five (5) months. I therefore sentence the convict to 1 (one) year and seven (7) months imprisonment which shall commence from the date of this sentence. DATED at BABATI this 28th day of August, 2024. D. C. KAMUZORA JUDGE Page 7 of 7

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