

TANZANIA / JUDGMENT

# INNOCENT MASWETI 222 Edited

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF BABATI AT BABATI CRIMINAL SESSIONS CASE NO. 13388 OF 2024 REPUBLIC VERSUS INNOCENT MASWETI SENTENCE 24th & 27th June, 2024 KAMUZORA, J Innocent Masweti being represented by Mr. Erick Machua, learned advocate was arraigned 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 Ms. Bernadeta Mosha, learned state attorney, Innocent Masweti pleaded guilty and was convicted by this court for the offence of manslaughter contrary to sections 196 and 198 of the Penal Code [Cap 16 RE 2022]. He is now a convict and the matter is coming for assessing and passing sentence against him. Briefly as could be gathered from the records, on 6/3/2024 the convict went to his mother's home to get his wife who had fled there after a quarrel between them. He knocked at the door forcing his wife get out of the house. The deceased emerged holding a club and asked the convict as to why he Page 1 of 6 was causing trouble. The deceased started assaulting the convict on his back and legs using a club he was holding. The convict did fall down and in the course of self defence, he grabbed a stone and threw it at the deceased hitting his head and causing him injury. The incident was witnessed by the deceased's wife. The matter was reported to the police station where the deceased was issued with a PF3 and was sent to Tumaini Hospital for medical treatment but he was referred to Manyara referral regional hospital and later referred to Benjamini Mkapa hospital at Dodoma. The deceased's health deteriorated and he passed away on 11/3/2024. On 14/3/2024 the post mortem examination was conducted on the deceased's body and the cause of death was confirmed as traumatic brain injury. The convict was arrested and sent to Katesh police station and upon being interrogated, he confessed to the offence before the police officer and before the justice of peace. His extrajudicial statement was admitted as exhibits before this court. When he was arraigned before this court, he pleaded guilty to manslaughter and was convicted forthwith. When Ms. Bernadeta Mosha, learned State Attorney was asked to address the court on the aggravating factors, she submitted that there are Page 2 of 6 no previous criminal records against the convict but prayed for the convict be punished in considering that, the conduct of the convict costed life of a person. That, he attacked the deceased with a stone on the head which is the dangerous part of the body thus, causing his death. That, the deceased was dependable to his family thus, his death caused grief to his family. According to her, the offence falls under the low-level of seriousness which attracts sentence of 4 years imprisonment or discharge. Mr. Erick Machua mitigated for the convict and insisted on lenient sentence for different reasons. He

prayed for the court to consider that the convict is the first offender as he has no previous criminal record. That, the convict was more cooperative at all times as he even sent the deceased to the hospital and he also sent money for the deceased's treatment. That, the convict has shown remorse and pleaded guilty before this court saving costs in prosecuting the case. That, the convict is still young aged 24 years old, a father of two children aged 13 and 8 years and he has a wife and elderly mother who all depends on him. He prayed for this court to also consider that, the convict has been in remand for almost three months and he is suffering from chest pain unable to do heavy duties. He also prayed for this court to consider the circumstance of the incident for the deceased triggered Page 3 of 6 the fight. He supported the prosecution position that circumstance of this case fall under low level manslaughter and urged this court to be guided by the sentencing guidelines and impose a conditional discharge. I have thoughtfully considered every fact brought before this court and indeed, I agree that there was no evil intention of the offender to cause death to the deceased. The facts which were read by the State Attorney as well as evidence found in the statements admitted in court reveal that, the convict went to his mother for his wife. The deceased emerged with a club and started assaulting the convict. It was because of that attack, the convict defended himself by hitting the deceased with a stone causing his death. From the circumstance of this case, I agree with the defence counsel that the deceased contributed to what befallen him by provoking the convict with no apparent reason. The conduct of the convict after the attack shows remorse as immediately confessed to the offence. He also tried to save the deceased's life by taking him to hospital and paying for the treatment costs. Despite all these circumstances, the convict's conduct cannot be left unpunished as it consumed the life of a person. I am convinced by the position from both sides that the circumstance of this offence falls under low level manslaughter which attracts not more than 4 years imprisonment. Page 4 of 6 However, since the deceased started the fight and the convict attacked him in self defence, this court find it reasonable not to condemn him on the highest sentence under law level manslaughter. I therefore find it reasonable to assess the sentence at three years' imprisonment. Being guided by the sentencing guidelines and in considering that the offender pleaded guilty to the offence saving court's time and resources especially costs in prosecuting the case by summoning witnesses, the offender deserves 1/3 deduction from the sentence of three (3) years which is 10 months. I would have therefore sentenced the convict to 2 years and 2 months imprisonment but, I have also considered the three months period spent by the convict in custody waiting for trial. The convict Innocent Masweti is therefore liable to serve sentence of one (1) year and eleven (11) months in prison which shall run from the date of conviction on 24th June, 2024. I have however considered the impact of custodial sentence to the convict. It is undisputed fact that the convict and the deceased were brothers, they have their elderly mother and families to take care of. Now that the deceased is gone, the convict is expected to take care of the family. While it is important that a wrong dourer be punished, reasonably, it is equally important to consider life of other people left behind. Custodial Page 5 of 6 sentence in the circumstance of this case will not help to mend the mistake and put the family together. In alternative, under Community Service Act I issue community service order for the offender to serve the above sentence by doing community works under the supervision of the Community Service Officer. This alternative sentence will be subject to confirmation from the community

service officer that the offender is a fit person to serve the sentence under community service order. For proper execution of the court's order, it is ordered that the Community Service Officer be notified to conduct a thorough investigation on the offender's capacity to serve the sentence under community service order and file a report to this court, within 14 days from the date of this order and serve copy to the prosecution side. The offender shall remain in custody until when the Community Service Officer will file the investigation report to this court. It is so ordered. DATED at BABATI this 27th Day of June, 2024. Page 6 of 6

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