

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MTWARA
AT MTWARA
CRIMINAL SESSION NO. 50 OF 2022**

**THE REPUBLIC
VERSUS
KENETH THEODORY MEMBE**

RULING ON SENTENCE

27th February, 2024 & 5th March, 2024

MPAZE, J.:

On 19th February 2024, the accused was convicted of Manslaughter based on his plea of guilty. The accused also admitted to the facts as narrated by the public prosecutor, admitting them as true and correct.

The court carefully examined the facts and noted that the origin of the deceased's death stemmed from the deceased throwing a stone at the accused's child. The stone struck the child on the forehead, causing bleeding. This situation prompted the accused to visit the deceased's home accompanied by his injured child.

Upon arrival, a dispute ensued between the deceased and the accused, leading to the accused pushing the deceased who fell to the ground. After several days, the deceased passed away, and the cause of

death was reported as '***Ruptured Viscera Organ Intestinal Reforation.***'

According to these facts, the prosecution has requested that the accused be sentenced at a medium level since, despite not using any weapon, he still ended a person's life.

On the defence side, they have asked that the accused be subjected to a low-level punishment and be given an absolute discharge due to the following reasons;

1. The accused has a family which depends on him, and at the age of 60, a severe punishment would significantly affect him.
2. The incident occurred in the heat of an argument. After the accused arrived at the deceased's home with his injured child, the deceased continued to pose a threat to the child. In response, the accused pushed the deceased, who fell on the ground, and the accused left without realizing the harm caused.
3. The accused is a first offender, expressing remorse for his actions. During the time spent in custody, he has learned from the experience.

4. The accused has been cooperative, admitting guilt and alleviating the burden on the court.

The defence counsel underscores that considering all these reasons, the accused should be granted an absolute discharge.

Indeed, it is correct that in passing a sentence, the court considers various factors such as aggravating and mitigating factors, the seriousness of the offence and how was committed. The court also takes into account the purpose of sentencing aiming at rehabilitation, reformation and deterrence.

Guided by the Tanzania Sentencing Guidelines, 2023, which guide sentencing based on the level of seriousness of the offence, in the present case, after careful consideration of aggravating factors, mitigating factors and the circumstances surrounding the commission of the offence, it is observed that the same falls into the low-level category, where a sentence is ranging from 0 to 4 years imprisonment.

Although the law provides the penalty for the offence of Manslaughter is life imprisonment, the guidelines outline a range of sentences from life imprisonment to absolute discharge, after considering various criteria.

Therefore, if this case were to proceed to the full trial, and the accused were found guilty, considering the circumstances of how the offence was committed and the time spent in custody, the accused could have been sentenced to 2 years imprisonment.

However, given the age of the accused person, who is currently 60 years old, his familial responsibilities, the circumstances surrounding the offence, and the fact that he readily pleaded guilty without any resistance, coupled with the seven years already spent in prison, it is concluded that the accused deserves a conditional discharge.

I have reached this conclusion also after considering that the accused has caused the loss of a person who had the right to live. Therefore, the accused is hereby sentenced to serve a 12-month conditional discharge, with the condition that he must not commit any offence during this period.

It is so ordered.



M.B. Mpaze,

Judge

5/3/2024

COURT: Right of appeal fully explained.



M.B. Mpaze,

Judge

5/3/2024