

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[IN THE DISTRICT REGISTRY OF ARUSHA]
AT ARUSHA
CRIMINAL SESSIONS NO. 52 OF 2022

(Original Criminal Case No. P.I No. 8/2021 District Court Arusha)

REPUBLIC.....COMPLAINANT

VERSUS

GIVEN CHARLES @ MOLLEL.....ACCUSED PERSON

SENTENCE

14/4/2022 & 18/4/2022

GWAE, J

This court is duty bound to assess correctness or appropriate sentence that suit the accused, Given Charless @ Mollel, a boy aged 20 years, a peasant and resident of Sokoni area within Arumeru District in Arusha Region who has been convicted of the offence of Manslaughter contrary to section 195 read together with section 198 of the Penal Code Chapter 16, 2019 (Code).

Initially, the convict and another, Robert s/o Laban @ Mollel were charged with the offence of Murder c/s 196 of the Code of Melkizedeki S/O Robert that occurred on the 29th December 2021. The offence which was not bailable in law. However, when the matter was called on for plea taking, the later was discharged as per section 191 (1) of the Code, we thus proceeded with the accused person who promptly pleaded guilty and was eventually convicted.

Both sides have rival prayers in relation to the court's imposition of a sentence against the convict. It was the prayer by Miss Riziki mahanyu, the learned state attorney who appeared in court representing the Republic that the accused person be stiffly and custodially sentenced and she ranked the seriousness of the offence to be medium one on the ground that; the convict caused a loss of life of a human being and she condemned the use of offensive weapon.

On the other hand, Mr. Kinabo, learned advocate who represented the accused, was of the view that the convict should be leniently sentenced and if it pleases the court, he be conditionally discharged on the following grounds; that, the convict was entitled to personal defence as the deceased was armed with an axe and a knife and the deceased was in a company of

two other persons one Roba and Chebe who had common intention to dangerously injure him, that the convict was seriously injured, that, he ran away for the purpose of seeking a help from the 2nd accused, his grandfather, that, he deceased prior to his demise wrote that the one who killed him was Lendemilali (1st accused and 2nd accused's name), that means the deceased planned to cause fracas, that, that she pleaded guilty to the offence and that, the accused stayed in remand since 29th September 2021, that; the convict is the first offender.

Having the mitigating factors aforementioned particularly, that, the deceased was in accompany with two others while armed and his prior plan of fracas or even causing deaths, it follows therefore, the convict was entitled to his personal defence as provided for under provisions of section 18 of the Code which reads and I quote;

section 18 of the Penal Code of the Penal Code Revised Edition, 2002 which reads;

"18 Subject to the provisions of section 18A, a person is not criminally liable for an act done in the exercise of the right of self defence or the defence of another or the defence of property in accordance with the provisions of this Code"

Since application of section 18 is subject to section 18 A of the Act, it is therefore, pertinent to have it quoted herein under:

"18A.-(1) Subject to the provisions of this Code every person has the right;

(a) to defend himself or any other person against any unlawful act or assault or violence to the body; or

See also a judicial precedent in the case of **Nico Peter @ Rast v. Republic** (2006) TLR 84.

The convict, in my considered view, would not let himself be killed undefendedly, he was thus actually entitled to ensure that he not be cut by the deceased accompanied by two other persons as envisaged by his cautioned statement, though not tendered however the fact that the convict was found to have sustained serious injuries as an indication that he was actually stabbed and therefore to be entitled to repel the actual attacks by armed persons, the deceased inclusive.

I have considered other factors namely; that the accused is the first offender and that he had stayed in remand since 29th September 2021 as correctly advanced by the defence counsel,

Having deliberated as herein above, I am therefore of the considered view that the severity or extent of seriousness of the offence is low level whose sentence starts conditional discharge to four (4) years imprisonment as correctly proposed by defence.


The mitigating factor that the accused's plea of guilty constitutes repentance on his part (See) Therefore, the accused is hereby awarded benefit of his plea of guilty for 1/3 of the sentence which results into a reduction of one (1) year from three years sentence that he would have been sentenced if the case had proceeded to a full. The said three (3) years jail or other sentence is now reduced to **two (2)** however for the reasons stated above it is found to be proper for him to serve the said sentence in Community service.

That said and done, the convict, **Given Charles** is hereby sentenced to two (2) years Community service commencing from when he was placed in police custody that is on the 29th September 2021. The convict has to do public duties as assigned a Community Service Office at Arusha. This community service order includes the following orders;

- a. That, the accused person shall work for not more than four (4) hours per working day as stipulated under Regulation 27 of the Community Service Regulations, GN. 87 of 2004
- b. That, the convict shall be assigned public unpaid works at Arusha City as will be deemed fit by community service officer who shall closely supervise the convict.
- c. Upon proof of gross breach of the community service order by the offender, this order may be substituted to custodial sentence.
- d. That, the Community Service Officer shall submit a report upon satisfactory completion of service as per Regulation 41 of the Regulations.

Order accordingly.

Sentence imposed at ARUSHA this **18th July, 2022**


M. R. GWAE,
JUDGE
18/07/2022

Court: Right of appeal to the Court of Appeal of Tanzania fully explained to the parties in of the imposed sentence only.




M. R. GWAE,
JUDGE
18/07/2022