

GWASA S/O NYAMUSE.....APPELLANT

and

THE REPUBLIC.....RESPONDENT

(Appeal from the conviction of the High Court of Tanzania at Mwanza) (Korosso, J.) dated the 20th day of December, 1985

in

Criminal Sessions Case No. 71 of 1985

JUDGEMENT OF THE COURT

NYALALI, C.J.:

The appellant in this case was jointly charged and convicted in the High Court at Mwanza with another. Both were convicted each on his own plea of guilty to the offence of manslaughter contrary to section 195 of the Penal Code and were each sentenced to fifteen years imprisonment. The other convict, that is, one VIANA VEHANT, appealed to this Court against the sentence and this court allowed the appeal by reducing the sentence to five years from the date of conviction. This court found that the learned trial Judge had misdirected himself in considering the factors relevant to the sentence which he imposed. This court intimated that the present appellant who had not then appealed was at liberty to appeal within 14 days from the judgement of the court in that previous appeal. The appellant has thus exercised the liberty given to him by this court and he indicated that he wished to be present at the hearing of his appeal against sentence.

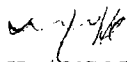
today as he has apparently been moved from one prison to another. He is however represented by Mr. Rugarabamu, Learned Advocate. We have considered whether this court is precluded from hearing this appeal in his absence. The peculiar circumstances of this appeal arising entirely from the decision of this court in the previous appeal lead us to the conclusion that we are not precluded from hearing this appeal in the absence of the appellant since his presence will make no difference to the outcome of the appeal and especially because the appellant relies entirely on the principles applied by this court in the previous appeal. The trial Judge in sentencing the appellant in this appeal misdirected himself in the some way and to the some extent as he did in sentencing the other convict. We are bound to interfere with the sentence in the same way and to the same extent by reducing the sentence to five years imprisonment from the date of his conviction and we order accordingly.

F. L. NYALALI
CHIEF JUSTICE

L. M. MAKAME
JUSTICE OF APPEAL

R. H. KICANGA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


J. H. MSOFFE
DEPUTY REGISTRAR

