

**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

(CORAM: RAMADHANI, J.A., MUNUO, J.A., And MSOFFE, J.A.)

CRIMINAL APPEAL NO. 86 OF 2002

BETWEEN

CHARLES MASHIMBA APPELLANT

AND

THE REPUBLIC RESPONDENT

**(Appeal from the conviction of the
High Court of Tanzania at Tabora)**

(Lukelelwa, J.)

dated the 31st day of May, 2002

in

Criminal Sessions Case No. 156 of 2001

JUDGMENT OF THE COURT

MUNUO, J.A.:

The appellant, Charles Mashimba, through the services of Mr. Muna, learned advocate, is appealing against the sentence in Criminal Sessions case No. 156 of 2001 in the High Court of Tanzania at Tabora, before Lukelelwa, J. In that case the appellant pleaded guilty to the offence of manslaughter c/s 195 of the Penal code, Cap. 16 of the Revised Laws of Tanzania. Upon conviction on his plea of guilty, the learned Judge sentenced him to a term of twenty years imprisonment. Aggrieved, the appellant lodged the present appeal against the sentence.

In his single ground of appeal, Mr. Muna, learned advocate, complained –

“That the sentence of twenty (20) years imprisonment was excessive regard being had to the circumstances under which the offence was committed.”

Contending that the sentence of twenty years imprisonment was manifestly excessive, counsel for the appellant faulted the learned trial Judge for not considering the fact that the appellant was a first offender and that he had been in custody for about 1½ years, and furthermore that he had pleaded guilty to the offence thereby showing contrition. Had the learned Judge considered all these factors and judiciously exercised his discretion, Mr. Muna contended, he would have imposed a lenient sentence on the appellant. Stressing that the appellant had admitted the killing before the police, a Justice of the Peace and the learned Judge, which admissions saved time and costs on the part of the law enforcers and the court, over and above showing contrition for the offence, Mr. Muna urged us to reduce the sentence and give the appellant a fair sentence.

Mr. Mwampoma, learned State Attorney, supported the sentence meted out by the High Court on the ground that it was lawful and adequate. He argued that the learned Judge did not invoke a wrong principle so we should refrain from interfering with the sentence. The learned State Attorney observed that the sentence was not excessive because the learned Judge considered the multiple cut-wounds and fire-brand burning of the deceased's private parts by the appellant which aggravating factors caused the learned Judge to impose a stiff sentence of twenty years imprisonment. Mr. Mwampoma urged us to dismiss the appeal in its entirety.

The issue is whether there is cause to interfere with the sentence imposed on the appellant by the learned Judge.

We had the advantage of referring to A HANDBOOK ON SENTENCING with a particular reference to Tanzania by Brian Slattery at Page 14 where the learned author comments on sentencing by stating:

"The grounds on which an appeal court will alter a sentence are relatively few, but are actually more numerous than is generally realized or stated in the cases. Perhaps the most common ground is that a sentence is "manifestly excessive," or as it is sometimes put, so excessive as to shock. It should be emphasized that "manifestly" is not mere decoration, and a court will not alter a sentence on appeal simply because it thinks it severe. A closely related ground is when a sentence is "manifestly inadequate." A sentence will also be overturned when it is based upon a wrong principle of sentencing... An appeal court will also alter a sentence when the trial court overlooked a material factor, such as that the accused is a ... first offender, or that he has committed the offence while under the influence of drink. In the same way, it will quash a sentence which has obviously been based on irrelevant considerations ... Finally an appeal court will alter a sentence which is plainly illegal, as when corporal punishment is imposed for the offence of receiving stolen property."

The record shows that the learned Judge found the appellant's infliction of 6-7 cut-wound on the neck, thighs and lower limbs and the burning her private parts "very brutal indeed" which was why he imposed a twenty year imprisonment sentence on the appellant. The learned Judge also admonished victims of infidel spouses to exercise emotional restraint when they encounter adultery instead of taking the law into their own hands as the appellant did by killing his adulterous spouse.

All in all, we think the learned Judge overlooked the fact that the appellant was outrageously provoked by the misconduct of his infidel spouse, and, or that the appellant had saved time and expense by pleading guilty over and above showing contrition for the unlawful killing of his spouse.

We find support in the case of **Silvanus Leonard Nguruwe versus Republic** (1981) TLR 66 in which the Court of Appeal of Tanzania held that:

"Before the Court can interfere with the trial High Court's sentence, it must be satisfied

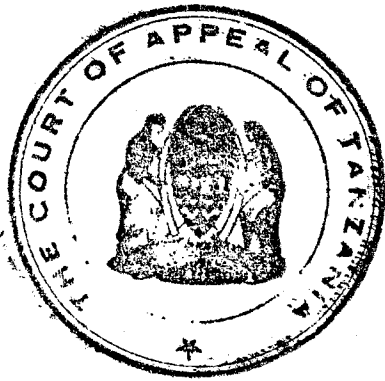
either that, the sentence imposed was manifestly excessive, or that the trial Judge in passing the sentence ignored to consider an important matter or circumstances which he ought to have considered, or that the sentence imposed was wrong in principle.”

We have already observed that the trial Judge overlooked the fact that the appellant was gravely provoked by the adulterous conduct of his late wife and that he also ought to have considered the fact that the appellant was a first offender who deserved some leniency particularly because he pleaded guilty to the offence of manslaughter and by so doing saved the court’s time and expense of conducting a full trial.

For the reasons stated above, we reduce the manifestly excessive sentence of twenty years imprisonment to five years imprisonment which shall take effect from today. We accordingly allow the appeal.

DATED at MWANZA this 16th day of July, 2004.

A. S. L. RAMADHANI
JUSTICE OF APPEAL



E. N. MUNUO
JUSTICE OF APPEAL

J. H. MSOFFE
JUSTICE OF APPEAL

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

(S. M. RUMANYIKA)
DEPUTY REGISTRAR