IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

(CORAM: LUBUVA, J.A., MBAROUK, J.A., And OTHMAN, J.A.

CRIMINAL APPEAL NO. 314 OF 2007

REHEMA RASHID UMAGI ..... APPELLANT
VERSUS
THE REPUBLIC ..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Sumbawanga)

(Mmilla, J.)

dated the 7th day of May, 2007
in
Criminal Sessions No. 2 of 2006

JUDGMENT OF THE COURT

11 & 14 July 2008

MBAROUK, J.A.:

The appellant, Rehema Rashidi Umagi is appealing against sentence only. In Criminal Sessions Case No. 2 of 2006, the High Court (Mmilla, J.) sitting at Sumbawanga convicted the appellant on her own plea of guilty to the offence of manslaughter contrary to section 195 of the Penal Code. She was sentenced to fifteen (15) years imprisonment. Dissatisfied with the sentence, hence this appeal has been preferred.

In this appeal, Mr. Mwakolo, learned advocate represented the appellant, while Ms. Mwanda, learned State Attorney appeared for the respondent Republic.

The memorandum of appeal filed by Mr. Mwakolo, learned advocate for the appellant contained only one ground which states as follows:

> 1. That the Honourable High Court Judge erred both in law and fact when he convicted and sentenced the appellant to serve a sentence of 15 years imprisonment which was too excessive and in total disregard to the mitigation offered by the appellant before sentencing her and he ought to have sentenced her to a lenient and lesser sentence.

At the hearing, Mr. Mwakolo submitted that the trial High Court judge imposed a manifestly excessive sentence. He added that, the principles of sentencing were not followed. In support of his argument Mr. Mwakolo referred to the decision of this Court in **Juma**

Buruhani Mapunda and Another v. R, in Criminal Appeal No. 40 of 2002 Mbeya Registry (unreported) in which the case of **Yohana Balicheko v. Republic** [1994] TLR 5 was referred.

He further submitted that the trial judge was supposed to weigh and take into consideration the mitigation factors as well as other relevant circumstances in order to reach a correct decision. Mr. Mwakolo, urged us to find the learned trial judge as mistaken when stating that "in a fit case such factors may constitute basis for lenience", without giving any sort of elaboration of what is a "fit case". He added that the learned trial judge should have directed himself on the fact that the deceased provoked the appellant a short while before pouring kerosene on the deceased.

Mr. Mwakolo further submitted that, had the learned trial judge taken into consideration the issue of the provocative words uttered by the deceased before the killing, together with other mitigating factors, he would have imposed a lesser sentence. For that reason,

Mr. Mwakolo, learned advocate for the appellant urged us to consider reducing the sentence to five (5) years imprisonment.

On her part, Ms. Mwanda, learned State Attorney representing the respondent Republic supported the appeal. She briefly submitted that it is true that the sentence imposed by the trial judge was manifestly excessive considering the principles of sentencing. She referred to the decision of this Court in **Omari Athuman Mkumbila v. Republic**, Criminal Appeal No. 61 of 2007 at Mbeya (unreported).

Ms. Mwanda further submitted that the learned trial judge should have taken into consideration what had happened immediately before the incident and the mitigating factors given. As a result, Ms. Mwanda said, the learned trial judge imposed an excessive sentence to the appellant.

Hence, she prayed for the sentence imposed upon the appellant to be reduced.

It is common knowledge that this Court will not interfere with a sentence imposed by the High Court unless the Court is satisfied on the following factors:-

1. That the sentence was manifestly excessive.

2. That the sentencing court failed to consider material circumstance.

3. That it otherwise erred in principle.

This principal has been followed by this Court in a number of cases. See for instance, **Yohana Balicheko** (supra), **Juma Buruhani Mapunda and Another** (supra) and **Omari Athuman Mkumbila** (supra) among others. Hence it is now trite law that in examining whether the sentence is excessive, courts are guided by those sentencing principles.

Bearing in mind these principles, let us examine briefly the circumstances which led to the killing of the deceased by the

appellant. As it appears in the extra-judicial statement (Exh. P4), sometimes in January, 2004, the appellant Rehema Rashidi Umagl was given some money by her husband to go to Kigoma for treatment of her neck, back and waist. She remained at Kigoma for three weeks. When she came back at about 5.00 p.m. she did not see her husband at home. Her children told her that when she was away her husband was not sleeping at their house. The children told their mother that their father was sleeping at a house of another woman in the village. At about 7.30 p.m. her husband came to the appellant's house and when greeted he remained silent but later replied that the appellant was foolish. Thereafter at about 8.00 to 9.00 p.m. he left the house presumably to sleep at other woman's house.

Early in the morning, next day, the deceased who had spent the night with the appellant's husband passed through the appellant's house and said:

> "utashangaa, utakuwa unajilala kwa vidole sisi tunachuna buzi mtakuwa mnalimia juani sisi ni walaji."

Literally those words can be translated as follows:-

> "You will be surprised you are working hard while we are taking the wealth from your husband. You are cultivating in the sun while we harvest easily."

When the appellant reported to her husband about what the deceased had said the appellant got the following reply from her husband:

> "... wewe siyo mwanamke, mwanamke gani unalala kitandani kama maiti na mimi sijagi hapa nyumbani kwa kupenda kidonda chako hicho mimi huwa ninakuja hapa sababu ni nyumbani kwangu."

Literally, those words can be translated as follows:

> "you are not a woman, you just sleep on the bed like a dead person, I am not coming home to follow you, I am coming here because it is my house."

The appellant further stated that, another day when she was going to fetch water at the well, she met the deceased who told the appellant:

> "mtaambulia hivyo hivyo wanaume wanawaeleza muende kwenu mtakuta vitu vya ndani vimeisha, sisi tunazidi kuchana."

Literally, those words can be translated as follows:

> "you will acquire nothing. Your husband tells you to go home, when coming back you will notice your belongings inside have vanished. We are still enjoying the fruits."

According to the appellant those insulting words were repeated time and again. For instance, one day when the appellant was on the way going to her house after buying kerosene, she passed

through the house of the deceased, and was insulted again. She said she could resisted no more. She followed her in the kitchen and poured kerosene on the deceased. It seems fire broke out and the deceased was burnt to death. Those were the facts leading to the death of the deceased.

Looking at the sentence imposed by the trial judge, it is not shown that he had considered these circumstances.. The learned trial judge stated:

> "I have taken into consideration the mitigating factors advanced by the learned defence counsel Mr. Mwakolo on behalf of the accused person to wit, that she is a first offender who has been in remand prison for about 3 years, similarly that she has seven (7) children all of whom are dependent on her ....."

From this, it seems clear to us that learned trial judge did not consider the immediate circumstances that led to the death of the deceased. Had he considered the whole circumstances and mitigating factors given, we think he would have imposed a lesser

sentence as urged by both Mr. Mwakolo learned Counsel for the appellant, and Ms. Mwanda, learned State Attorney for the respondent Republic.

In the event, we think that sentence of fifteen (15) years imprisonment imposed upon the appellant was manifestly excessive.

For the foregoing reasons, we set aside the fifteen (15) years sentence and substitute it to a term of five (5) years imprisonment. The appeal is allowed to that extent.

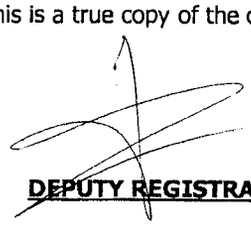
DATED at MBEYA this 14th day of July, 2008.

D.Z. LUBUVA
JUSTICE OF APPEAL

M.S.MBAROUK
JUSTICE OF APPEAL

M.C.OTHMAN
JUSTICE OF APPEAL

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



DEPUTY REGISTRAR