IN THE COURT OF APPEAL OF TANZANIA
AT IRINGA

(CORAM: KILEO, J.A., MJASIRI, J. A. And MUSSA, J.A.)

CRIMINAL APPEAL NO. 183 OF 2011

EMMANUEL S/O BURA ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the Decision of the High Court of Tanzania at Iringa)

(Werema, J.)

dated the 7th day of February, 2008
in
Criminal Session Case No. 27 of 2006

.....

JUDGMENT OF THE COURT

11th & 11th December, 2012

MJASIRI, J. A.:

This is an appeal against sentence only. In Criminal Sessions Case No. 27 of 2006, the High Court (Werema, J.) sitting at Iringa convicted the appellant of manslaughter contrary to section 195 of the Penal Code Cap 16, R.E. 2002. He was sentenced to a term of imprisonment for eight years. Aggrieved with the sentence, the appellant has preferred this appeal. The appellant was initially charged with murder contrary to section

196 of the Penal Code, but pleaded guilty to a lesser offence of manslaughter.

At the hearing of the appeal the appellant was advocated for by Mr. Basil Mkwata, learned Advocate while the respondent Republic had the services of Mr. Maurice Mwamwenda, learned Senior State Attorney. Mr. Mkwata filed a memorandum of appeal on behalf of the appellant containing a single ground of appeal, namely:-

> *"That the learned trial judge failed to consider material factors when sentencing the appellant and as a result thereof he passed a sentence which is manifestly excessive".*

The background giving rise to the case is as follows. The appellant and the deceased were at Mnyanambo Village drinking local brew. A misunderstanding arose between them. They left the club together and had a fight on the way. The appellant hit the deceased with a stick and stabbed him using a pocket knife. The deceased was taken to hospital

where he died before receiving treatment. The deceased sustained head injuries and the cause of death was cerebral haemorrhage.

The sole ground of appeal is that the sentence was manifestly excessive. The thrust of the appellant's complaint is that the learned judge failed to take into account relevant mitigating factors before imposing sentence. It was Mr. Mkwata's submission that the circumstances of the case were such that the sentence imposed was excessive. He capitalized on the statement by the judge that the "prerogative of mercy" lies with the Presidency. On his part Mr. Mwamwenda supported the sentence. He submitted that the learned judge took into account the mitigating factors before imposing sentence. He stated that the offence of manslaughter carries a penalty of life imprisonment, so the sentence of eight (8) years imprisonment was not excessive. He made reference to the case of **Hatibu Gandhi and Others v Republic** (1996) TLR 12 (CA).

In the case of **Yohana Balicheko v R** (1994) TLR 5 at page 7, this Court made the following observations:

"This Court will interfere only in limited circumstances including where we are satisfied that the sentence was manifestly excessive or that the sentencing court failed to consider a material circumstance or that it misdirected itself in some particulars or that it otherwise erred in principle".

See also **Mohamed Ratibu @ Saidi v The Republic,** Criminal Appeal No. 11 of 2004 (unreported).

In mitigation, it was stated that the appellant had been in remand custody for three (3) years and six (6) months, that he was a first offender, he had children aged three (3) and four (4) years, he is a victim of HIV/AIDS and is remorseful. In sentencing the appellant, the learned Judge stated as follows:-

"The accused committed this horrendous offence under influence of alcohol. Notwithstanding this, he deserves to be punished. The offence of manslaughter contrary to section 195 of the Penal

Code attracts a sentence of life imprisonment. However, this sentence may be reduced as the Court deem fit on the basis of mitigating factors that were presented by the learned Advocate..... I therefore convict the accused to serve a term in prison of eight years from now".

It is evident that the learned judge took into account all the mitigating circumstances when passing sentence.

We on our part entirely agree with the submissions made by the learned Senior State Attorney.

It is trite law that this Court cannot alter a sentence imposed by the High Court unless it is satisfied that the sentence imposed is manifestly excessive or that the judge in passing sentence failed to consider an important matter or circumstance which he ought to have taken into consideration, or that otherwise the sentence imposed is wrong in law.

See **Silvanus Leorard Nguruwe v Republic** (1981) TLR 66; **Swalehe Ndugajilungu v Republic** (2005) TLR 94; Charles **Mashimba v Republic,** Criminal Appeal No. 86 of 2002, CAT (unreported) and **Ogalo s/o Owoura v R** (1954) 21 E. A. C.A. 270.

In **Swalehe's** case (*supra)* reference was made to the **Handbook on Sentencing** by Brian Slattery on page 14. The circumstances where an appellate court can interfere with sentence are as follows:-

1) Where the sentence is manifestly excessive.

2) Where the sentence is manifestly inadequate.

3) Where the sentence is based upon a wrong principle of sentencing.

4) Where the trial court overlooked a material factor and

5) Where the sentence is plainly illegal.

In the instant case, in sentencing the appellant the judge, correctly in our view, took into account the evidence as a whole and the mitigating factors. He did not in any way ignore the principles to be considered when passing sentence. In the light of this Court's decision in **Nguruwe's** case (*supra*), we are increasingly of the view that we have no basis whatsoever

in interfering with the sentence passed by the judge in the exercise of his discretion in the matter. The sentence imposed by the High Court was neither manifestly excessive nor unlawful.

We find no merit in the appeal and we accordingly dismiss it.

DATED at IRINGA this 11th day of December, 2012.

E. A. KILEO
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

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

M. A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL