

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MWANZA**

**(CORAM: MSOFFE, J.A., KIMARO, J.A., And JUMA, J.A.)**

**CRIMINAL APPEAL NO. 171 OF 2012**

**MUSSA MADUHU ..... APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**(Appeal from the judgment of the High Court of Tanzania  
at Mwanza)**

**(Sumari, J.)**

**dated the 11<sup>th</sup> July 2012**

**in**

**Criminal Sessions Case No. 51 of 2012**

.....

**JUDGEMENT OF THE COURT**

30<sup>th</sup> July & 2<sup>nd</sup> August, 2013

**KIMARO, J.A.:**

The appellant pleaded guilty to information of manslaughter contrary to section 195 of the Penal Code, [CAP 16 R.E. 2002]. He was sentenced to fifteen years imprisonment. Aggrieved with the sentence, he has filed one ground of appeal challenging the sentence for being manifestly excessive, given the mitigating factors which were presented before the trial court before sentencing.

The facts presented before the trial court show that on the night of 1<sup>st</sup> November, 2008 Mashauri Mashashi, the deceased, was in his house with Raila Olinda. The two were lovers. Raila Olinda was reported to have been the wife of the appellant but when the offence was committed they had separated. Somehow, on that date, the appellant in a move to trace his ex-wife so to say, went to the house of the deceased

and upon finding her there, he became furious and attacked the deceased with a panga. The deceased ran away.

The body of the deceased was found on the next day when the appellant followed his wife at the deceased's home and beat her. The wife of the appellant raised an alarm which was responded to by a lot of people. As the wife of the appellant went to report the incident to the village chairperson, the body of the deceased was found lying on the road. The appellant was then arraigned for the information of manslaughter and he pleaded guilty.

Before the appellant was sentenced, it was put in mitigation that he was a first offender, had been in remand custody for four years, he pleaded guilty hence saving the time and costs for conducting the trial, and given the fact that the deceased was having love affairs with the appellant's wife, the deceased contributed to the commission of the offence.

When the appeal was called on for the hearing, Mr. Salum Amani Magongo learned advocate represented the appellant. Mr. Anesius Kanunura, learned State Attorney represented the respondent /Republic.

In support of the ground of appeal the learned advocate repeated the mitigating factors which were given to the trial court before sentencing and said they justified imposition of a lenient sentence on the appellant. He cited the case of **Charles Mashuba V R** [2005] T.L.R.90 to augment his submission. He said the severe penalty of fifteen years imprisonment that was imposed on the appellant shows that the trial court did not consider the mitigating factors. He also cited the case of **Malwanile Ndyamukama V R** CAT Criminal Appeal No. 214 of 2004

(unreported) and said the sentence was excessive. He prayed that the appeal be allowed and the sentence be reduced.

The learned State Attorney on his part submitted that, considering the circumstances under which the offence was committed, the sentence of fifteen years imposed on the appellant was not excessive. He said the kind of weapon used, that is a "panga", and the severe cuttings that were inflicted on the deceased showed the sentence that was imposed on him was what he deserved. He said after all the maximum penalty for the offence of manslaughter is life imprisonment and the appellant was sentenced to fifteen years only. He prayed that the appeal be dismissed.

In the case of **Medard Karumuna @Lugosura V R** Criminal Appeal No. 332 of 2007 (unreported), the Court cited with approval the case of **Charles Mashimba V R** (supra). In the said case the Court made reference to Brian Slattery on his Handbook on Sentencing which talks of the circumstances under which an appellate court can alter a sentence imposed by a lower court. It says at page 14 that:

*"The grounds on which an appeal court will alter a sentence are relatively few, but and actually more numerous than is generally realized or stated in the cases. Perhaps the most common ground is that the 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 is 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.”*

This portion of the handbook giving circumstances under which an appeal court can interfere with the sentence imposed by a lower court (s) has been cited by the Court in a number of decisions of the Court. Among them are the cases of **Hasani Ally Salum Nyandau @ Jambo V R** Criminal Appeal No. 165 of 2004 (unreported), and **Silvanus Leanard Nguruwe V R** [1981] T.L.R. 66.

The question we ask ourselves is whether there are circumstances calling for interference of the sentence that was imposed by the trial court in this case.

With respect to the learned advocate for the appellant, our considered opinion is that there are no reasons for interfering with the sentence. Moved by the circumstances under which the offence was committed, that the appellant followed the deceased at his house and attacked him there, the kind of weapon he used and the injuries inflicted on the body of the deceased we do not see any reason for interfering with the sentence. The appellant ought to have known that he was cutting a human being. He was putting into danger the life of that

person. And that is what actually took place. The deceased died from the injuries inflicted on him. We have also considered the maximum penalty that is provided for, for the offence of manslaughter. It is life imprisonment. The trial court however sentenced him to only fifteen years. We think the learned trial Judge properly exercised her discretionary powers to impose on the appellant a deserving sentence. We dismiss the appeal in its entirety.

DATED at MWANZA this 1<sup>st</sup> day of August, 2013.


J.H. MSOFFE  
**JUSTICE OF APPEAL**

N.P. KIMARO  
**JUSTICE OF APPEAL**

I.H. JUMA  
**JUSTICE OF APPEAL**

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



  
P.W. BAMPIKYA  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**