IN THE COURT OF APPEAL OF TANZANIA
AT TABORA

(CORAM: LUANDA, J.A, MASSATI, J.A And MUGASHA, J.A)

CRIMINAL APPEAL NO 147 OF 2015

ZUBERI ALLY .....APPELLANT
VERSUS
THE REPUBLIC.....RESPONDENT
(Appeal from the Judgment of the High Court of Tanzania at Tabora)

(Matogolo, J)

Dated the 10th day of October, 2014
In
Criminal Session Case No. 111 of 2008
.....
JUDGMENT OF THE COURT

30th November, & 2nd December, 2015
LUANDA, J.A:

On 10/10/2014 the High Court of Tanzania (Tabora Registry) sitting at Kigoma convicted the appellant on his own plea of guilty and sentenced him to 7 years imprisonment. The appellant is aggrieved by the sentence to be on the high side, hence this appeal.

In this appeal, the appellant had the services of Mr. Mussa Kassim, learned advocate; whereas the Republic/respondent was represented by Mr. Ildefonce Mukandara, learned State Attorney.

Mr. Mussa has raised one ground of appeal which we reproduce hereunder:-

That the learned trial judge erred in law and in fact to impose excessive jail sentence of 7 years imprisonment to the Appellant without taking into account his mitigation factors.

In arguing the appeal, Mr. Mussa said the learned judge did not properly consider the mitigating factors. He contended that the learned Judge didn't consider all mitigating factors put across by the appellant. To him after going through the record he said the learned Judge did not consider all factors but he considered few. Had the learned judge considered all factors including the appellant to have been remanded in prison for a period of 8 years awaiting his trial, the age of the appellant (54 years) an old man, he has big family which depend on him, he would have not imposed the sentence of 7years. He prayed that the Court interferes with the sentence imposed by the High Court.

Responding, Mr. Mukandara said that the maximum sentence to the offence of manslaughter is life imprisonment. The sentence of 7 years imprisonment, under the circumstances of this case, is not excessive at all. And the learned Judge considered all mitigating factors. The appeal is devoid of merits. It should be dismissed.

In rejoinder, Mr. Mussa reiterated his position and urged the Court to interfere.

Briefly the facts upon which the appellant pleaded guilty was that on the fateful day around 10.00 p.m the appellant quarrelled with his wife (the deceased), in their room. The quarrel was heard by the children including their elder son Hussein. But after sometime the quarrel ceased.

Earlier in the morning, the following day, the appellant awakened Hussein and gave him Tshs. 500/= for home use. He also informed him about his mother to have already gone to the market place while the appellant was going to a Refugee camp and promised to return in the evening. Both the deceased and the appellant did not return until on the third day when Hussein felt a bad smell and saw flies around the room of his parents. He decided to break the door. To his surprise he saw the dead body of his mother. The matter was reported at police, the appellant was traced only to be found after six months at a distance far from his homestead. The body was examined, the cause of death was suffocation.

After he pleaded guilty, the appellant in mitigation through his advocate gave a number of factors including the age of the appellant, the period of 8 years he had spent before his trial, his family of eight children, and he readily pleaded guilty. In actual fact the learned Judge considered all mitigating factors as is reflected on pages 11 – 12 of the record. When sentencing the appellant the learned Judge said:

"The accused Zuberi Ally is the first offender. He has pleaded guilty to the offence of manslaughter. In mitigation the defence

counsel has explained to this Court that the accused and the deceased who were husband and wife had quarrels which were a result of jealous (wivu wa mapenzi). The accused did not use any lethal weapon and that the accused has been in remand prison for eight years and that during that period he has learn a lot and repent for the act he has taken against his deceased wife. The accused was also left with eight children to take care, I have considered the mitigation both by the prosecution as well as the defence. It is true that the accused killed his wife and he has been in the remand prison for eight years which is also a punishment to him, I have also considered his old age and his duty to take care of his eight children. However the accused dispite (sic) the circumstances the death of his wife occurred he ought to be wise enough in order to avoid killing his wife. I sentence the accused to serve seven(7) years imprisonment."

Was the sentence of 7 years imprisonment, in the circumstances of this case, too harsh and excessive?

First, we wish to reiterate that generally sentencing is the discretion of the trial court. An appellate court is not empowered to alter a sentence on the mere ground that if it had been trying the case, it might have passed a somewhat different sentence. However, an appellate Court like this one can only alter sentence imposed by a trial court on the following grounds:-

(i) *Where the sentence is manifestly excessive or it is so excessive as to shock.*

(ii) *Where the sentence is manifestly inadequate.*

(iii) *Where the sentence is based upon a wrong principle of sentencing*

(iv) *Where a trial court overlooked a material factor.*

(v) *Where the sentence has been based on irrelevant considerations, such as the race or religion of the offender.*

(vi) *Where the sentence is plainly illegal, as when for example, corporal punishment is imposed for the offence of receiving stolen property.*

(vii) *The period of time spent in custody awaiting trial. (See* ***Silvanus Leonard Nguruwe vR.*** *(1981) TLR 66;* ***Benadetta Paul vR.*** *(1992) TLR 97;* ***Rashidi Kaniki vR.*** *(1993) TLR 258;* ***Yohana Balicheko vR.*** *(1994) TLR and* ***Swalehe Ndungajilungu vR.,*** *(2005) TLR 94)*

In our case we have seen that the learned trial Judge considered all mitigating factors. The sentence of 7 years imprisonment is not a shock to call for our interference as correctly argued by Mr. Mukandara. In actual fact the appellant should have counted himself lucky to have received the sentence of 7 years imprisonment as the cause of death appears to be not in his favour.

In sum we decline to interfere with the sentence of 7 years imposed by the trial High Court. The appeal is devoid of merits. The same is dismissed in its entirety.

Order accordingly.

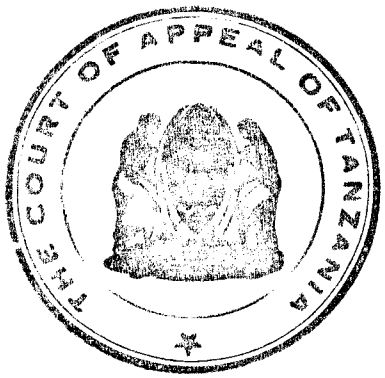
DATED at TABORA this 2nd day of December, 2015.

B.M. LUANDA
JUSTICE OF APPEAL

S.A. MASSATI
JUSTICE OF APPEAL

S. MUGASHA
JUSTICE OF APPEAL

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



P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL