IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: MBAROUK, J.A., LUANDA, J.A., And JUMA, J.A.)

CRIMINAL APPEAL NO. 64 OF 2015

CHACHA MWITA @ MARWA ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

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

(Mwangesi, J.)

dated the 03rd day of October, 2014
in
Criminal Session No. 109 of 2009

JUDGMENT OF THE COURT

18th & 20th May, 2016

LUANDA, J.A.:

This is an appeal against sentence. Initially the appellant (CHACHA MWITA @ MARWA) was charged with murder. Later, the charge of murder was dropped following an offer from the appellant to enter a plea of guilty to a lesser offence of manslaughter. The respondent/Republic accepted the offer. The charge of murder was substituted with manslaughter. The appellant pleaded guilty to the charge of manslaughter. The facts were adduced and eventually the appellant was convicted and sentenced to 12 years imprisonment. It is the sentence of 12 years imprisonment which is the subject of this appeal.

In this appeal, Mr. Deya Outa, learned advocate represented the appellant; whereas Mr. Mamti Sehewa, learned Senior State Attorney represented the respondent/Republic. The appellant himself filed a memorandum of appeal consisting of five grounds. Mr. Outa dropped three grounds and remained with two namely:

1. THAT: the presiding judge did not properly consider the whole circumstances of the case/crime and mitigating factors before sentencing him to (12) years in jail.
2. THAT: the sentence imposed upon the appellant was excessive in the contrast to the circumstances of the crime occurred.

Briefly the facts of the case were that the deceased was the appellant's mother in law. Before the incident, the appellant had quarreled with his wife. His wife went back home to her parents. After some days, the appellant went to his in laws with a view to persuading his wife to return to their matrimonial home. On arrival at the homestead of his in laws misunderstanding occurred between the appellant and the deceased. The deceased caused the appellant to be assaulted with sticks. In response the

appellant cut the deceased with a machete on her forehead. It was that cut which caused the death of the deceased.

Mr. Outa argued the two grounds together. He said the learned trial judge did not consider the mitigating factors of the appellant. He was emphatic that the record does not reflect the same to have been considered. Had the learned judge considered those factors, he would not have imposed the sentence of 12 years imprisonment especially taking into consideration the fact that the appellant had already spent good six years awaiting his trial, he charged. To him the sentence of 12 years imposed was excessive.

Responding, Mr. Sehewa countered the argument raised by Mr. Outa. He said the learned trial judge considered the mitigating factors. In any case, he went on, the sentence of 12 years is not excessive taking the fact that the maximum sentence for manslaughter is life imprisonment. The sentence of 12 years imprisonment should not be disturbed, he submitted.

The issue for determination and decision is whether the mitigating factors of the appellant were not considered by the learned trial judge. If the answer is in the affirmative whether this Court can interfere with the sentence of 12 years imprisonment.

We have carefully read the mitigating factors and the preamble before the learned trial judge handed down the sentence of 12 years imprisonment, we were unable to see the basis of the complaint. The learned judge considered all the mitigating factors. In actual fact he itemized them as presented by the defence counsel that the appellant had been in remand for a period of six years; he is a fairly young person; he has a family which depend on him; he readily pleaded guilty and that he was remorseful.

Since all the mitigating factors were considered, we are unable to fault the learned trial judge. And since the answer to the question posed is answered in the negative, the issue of interference does not arise at all. However, we wish to reiterate as to what point in time an appellate court can interfere with the sentence passed by the lower courts, at least for those not falling under the provisions of the minimum sentences. Normally an appellate court should not interfere with a sentence of a trial court merely because had the appellate court been the trial court it would impose a different sentence. An appellate court can only interfere with a sentence of a trial court if it is obvious that the trial court has imposed an illegal sentence or had acted on a wrong principle or had imposed a sentence which in the circumstance of the case was manifestly excessive or

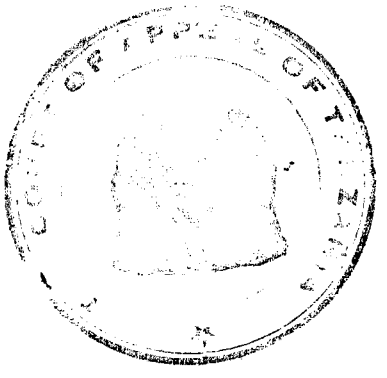
clearly inadequate. (See **Mohamed Ratibu @ Said VR,** Criminal Appeal No. 11 of 2004 (CAT unreported).

In this case the appellant miserably failed to show how the learned trial judge breached the principles of sentencing. The learned trial judge had exercised his discretion judiciously. We entirely agree with Mr. Sehewa that there is no reason to interfere with the sentence imposed by the trial court.

In sum, the appeal is devoid of merit. The same is dismissed in its entirety,

Order accordingly.

DATED at **MWANZA** this 19th day of May, 2016.



M. S. MBAROUK
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

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

J. R. KAHYOZA
REGISTRAR
COURT OF APPEAL