

IN THE COURT OF APPEAL OF TANZANIA

AT TANGA

(CORAM: MBAROUK, J.A. MWARIJA, J.A. And MWANGESI, J.A.)

CRIMINAL APPEAL NO. 329 OF 2016

**HASSANI CHARLES APPELLANT
VERSUS**

THE REPUBLICRESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Tanga)**

(Aboud, J.)

dated 24th day of June, 2016

in

Criminal Case No. 19 of 2016

JUDGMENT OF THE COURT

20th & 24th April, 2018

MBAROUK, J.A.:

In the District Court of Korogwe at Korogwe, the appellant Hassani Charles was arraigned for the offence of stealing by agent contrary to section 273(b) of the Penal Code, Cap. 16 R.E. 2002.

The facts as alleged by the prosecution at the trial court were that on 2nd November, 2015 during day time at Kakwambo village within Korogwe District in Tanga Region, the appellant was handed a motorcycle with Reg. No. MC 917 ADG make SANLG valued at Tshs. 2,200,000/- by Daniel Mashaku to carry Daniel's properties from Kwamalego Village. Instead of collecting the said properties as directed, the appellant fled away with the motorcycle to an unknown destination and failed to return the said motorcycle to its owner. The appellant was then arrested and taken at Korogwe Police Station where he confessed, hence accordingly charged.

On 30th November, 2015, at the trial court when the charge was read over and explained to the appellant, he pleaded as follows:-

"It is true" I ran away with the said motorcycle and disappeared."

Thereafter the trial court entered a plea of guilty. As per the practice, then the facts were read over to the appellant and he admitted to every fact as read and he then signed.

After the appellant pleaded guilty, he got convicted and then sentenced to ten (10) years imprisonment. Dissatisfied on sentence, his appeal before the High Court was unsuccessful after the same was dismissed. Undaunted, he has preferred this second appeal.

In this appeal, the appellant has preferred the following two grounds of appeal:-

- (1) That, the appellate judge erred in law by sustaining maximum sentence imposed by the trial court to the appellant without unusual circumstances which were shown to justify such sentence.
- (2) That, the appellate judge erroneously ignored a Handbook on sentencing by Brian Slattery in not

considering that the appellant is a youthful first offender.

At the hearing, the appellant appeared in person unrepresented, whereas the respondent/Republic was represented by Mr. Waziri Mbwana Magumbo, learned State Attorney.

When the appellant was given a chance to elaborate on his grounds of appeal, he opted to allow the learned State Attorney to respond to his grounds of appeal first and thereafter if the need arises, he may give his rejoinder submissions.

On his part, the learned State Attorney initially indicated not to support the appeal which is mainly based on sentence. He cited section 273(b) of the Penal Code and submitted that if the offender is found guilty for that offence, he is liable to imprisonment for ten years. However, he added that, a trial court is given discretion in imposing such a sentence.

After being asked by the Court as to whether the trial court has exercised its discretion judiciously, having failed to consider the fact that the offender/appellant was a first offender who pleaded guilty and that he was a youthful offender, the learned State Attorney changed his mind and agreed that all those factors were not considered by the trial magistrate and the first appellate court, as the appellant was imposed a maximum sentence. He therefore urged us to allow the appeal and reduce the sentence from ten years to seven years.

To start with, let us first begin with the premise of examining the contents of section 273 (b) of the Penal Code, to which the same reads as follows:-

"273. If the thing stolen is any of the following things, that is to say-

(a) N/A

(b) property which has been entrusted to the offender either alone or jointly with any

other person for him to retain in safe custody or to apply, pay or deliver it or any part of it or any of its proceeds for any purpose or to any person;

(c) N/A

(d) N/A

(e) N/A

the offender is liable to imprisonment for ten years."

The trial court imposed a maximum sentence to the appellant and the first appellate court confirmed it. The appellant's complaint is basically that the two courts below have failed to consider circumstances to justify such a maximum sentence.

Various decisions of this Court have repeatedly given guidelines on the principles to be considered by the appellate Court before it interferes with the decision of the lower court on

the issue of sentence. For example, See **Silvanus Leonard Nguruwe vs Republic**, [1981], TLR 66, **Yohana Balicheko vs. Republic** [1994] TLR 5, **Francis Chilema vs. Republic** [1968] HCD 510, **Edward Mange vs Republic**, Criminal Appeal No. 51 of 2014, **Republic vs Rashid Ally @ Wamtema**, Criminal Revision No. 1 of 2010 (both unreported) to name a few. In the decision of this Court in **Edward Mange** (supra) the principles upon which an appellate court may interfere with a sentence are as follows:-

- "(1) Where the sentence is manifestly excessive or is so excessive as to shock,*
- (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,*
- (5) Where the trial court ignored the period the appellant had been in custody pending trial,*

Those are the conditions under which an appellate court can interfere with a sentence of a lower court.

In expounding the situation where an accused person pleads guilty to an offence, this Court in the case of **Francis Chidema** (supra), stated as follows:-

"It is generally, if not universally recognized that an accused pleading guilty to an offence with which he is charged qualifies him for the exercise of mercy from the Court. The reason is, I think obvious, in that one of the main objects of punishment is the reformation, of the offender. Contrition is the first step towards reformation, and a confession of a crime as opposed to brazening it out, is an indication of contrition. Therefore in such a case a Court can, and does impose, a milder sentence that it would have done."

(Emphasis added.).

Elaborating on the issue of maximum sentences, B.D. Chipeta in his book "A Magistrate's Manual" states as follows:

"Most statutes provide the maximum sentence that may be imposed for a given offence. In other words, the appropriate sentence a particular offender in each case, and in the given circumstances of that case, is left to the discretion of the sentencing court. This is a wide discretion: it leaves a court with a wide field in which to maneuver. Perhaps this is as it should be, because no two cases or two offenders can have identical antecedents and aggravating or extenuating circumstances. But this being a judicial discretion, a court must exercise it judicially."

We are of the opinion that when a trial magistrate/judge is encountered with a situation where an offence attracts a maximum penalty as it has happened in this case, he is supposed to consider the circumstances stated herein above before he exercises his discretion. A famous author and an authority on

sentencing, Brian Slattery in his book 'A Handbook on Sentencing' states as follows:-

*"One effect which a maximum penalty may have, on occasion, is to lower the scale of punishment which courts might otherwise set for an offence. This flows from the oft-repeated principle that **"the maximum sentence should be reserved for the worst examples of the kind of offence in question."** Or as Georges C.J. has put it: "It is to be presumed that in fixing a maximum penalty the legislature must have had in mind the most aggravated circumstances which should be connected with commission of the offence." It follows that the maximum penalty should be imposed only rarely and in particularly shocking cases. Otherwise, it is inappropriate."*

[Emphasis added].

As pointed earlier in the instant case, the appellant was sentenced to ten years imprisonment after he was convicted of stealing by agent contrary to section 273(b) of the Penal Code. According to section 273(b) of the Penal Code, the sentence for an accused person found guilty of that offence is ten years, which is a maximum sentence.

Taking into account that, the appellant is a first offender, who has no previous conviction and being a youthful offender, we are of the opinion that although the sentence was legal, but the trial magistrate ought to have taken into account the above stated circumstances before exercising his discretion in imposing such a maximum sentence. Afterall, no reasons were stated by the trial court which led him to exercise his discretion in imposing such a maximum sentence. It is always a trite law that discretion has to be exercised judiciously.

In the circumstances stated herein above, we are of the considered opinion that the sentence of ten years imprisonment imposed on the appellant is on the high side and we therefore

accordingly substitute it with the sentence of five (5) years which should be counted from the day he was imposed his earlier sentence at the trial court. For that reason, we allow the appeal to the extent stated herein above.

It is so ordered.

DATED at **TANGA** this 23rd day of April, 2018.

M. S. MBAROUK
JUSTICE OF APPEAL

A.G. MWARIJA
JUSTICE OF APPEAL

S. S. MWANGESI
JUSTICE OF APPEAL

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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL