IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: MMILLA, J.A., MWANGESI, J.A., And MWAMBEGELE, J.A.)

CRIMINAL APPEAL NO. 83 OF 2018

RAMADHAN OMARY ---------- APPELLANT

VERSUS

THE REPUBLIC ---------- RESPONDENT

(Appeal from the judgment of the High Court of Tanzania Dodoma Registry sitting at Singida)

(A. Mohamed, J.)

dated the 8th day of March, 2018
in
Criminal Sessions Case No. 159 of 2017

JUDGMENT OF THE COURT

16th & 21st August, 2019

MWANGESI, J.A.:

In the High Court of Tanzania Dodoma Registry sitting at Singida, the appellant herein stood arraigned for the offence of murder contrary to sections 196 and 197 of the Penal Code, Cap 16 R.E of 2002 **(the Code)**. The particulars of the offence were to the effect that, on the 9th day of June, 2017 at Senene village, Iguguno Ward, Kinyangiri Division within Mkalama District in the Region of Singida, the appellant murdered one Anna d/o John @ Mama Juma

On the 8th March, 2018 which was after completion of the investigation, when the matter was called before the learned trial Judge for trial, the appellant successfully offered a plea of guilty to a lesser offence of manslaughter contrary to the provisions of section 195 and 198 of the Code. And, upon the information of manslaughter contrary to the provisions of section 195 of **the Code** being read over to the appellant, he pleaded guilty to the charge whereby, the Court invited the prosecution to give the detailed facts leading to the commission of the offence. The same were again readily acceded to by the appellant to be correct and true. In that regard, the appellant was convicted on his own plea of guilty to the charged offence of manslaughter.

Following the previous record and aggravating factors which were put forward to the Court by the prosecution in regard to the appellant, as well as the mitigating factors which were advanced by the learned counsel on behalf of the appellant, the learned trial Judge sentenced the appellant to serve a jail term of twelve years. The said sentence by the trial Court aggrieved the appellant, who resolved to lodge the current appeal to assail it, premising his grievance on four grounds namely: -

1. That, the trial Judge erred in law and in fact, in sentencing the appellant to twelve years'

imprisonment without considering that he was a first offender and give (sic) cooperation to all authority including the Court for admitting that he committed the offence.

2. *That, the trial Court erred in law and in fact, for sentencing appellant to twelve years' imprisonment without considering that the incidence were (sic) influenced with alcohol at the pombe shop.*
3. *That, the trial Court erred in law and in fact, for sentencing the appellant to twelve years' imprisonment without considering that it was deceased who set the incidence in motion.*
4. *That, the trial Court erred in law and in fact in sentencing the appellant to twelve years' imprisonment relying on aggravating factors alone and not seriously considering the mitigating factors.*

On the date when the appeal was called on for hearing before us, the appellant enjoyed the services of Mr. Fred Peter Kalonga, learned counsel,

whereas the respondent/Republic was represented by Ms. Judith Mwakyusa, learned State Attorney, who was assisted by Mr. Michael Lucas Ng'oboko, also learned State Attorney.

Mr. Kalonga, on taking the floor to address us in support of the appeal, submitted that even though there were four grounds of appeal preferred by the appellant, they all hinge on the same complaint that, the sentence meted out against the appellant after he had pleaded guilty to the charged offence of manslaughter, was manifestly excessive regard being had to the mitigating factors which were presented to the Court by his learned counsel. He argued that, in the mitigating factors, it was stated that the appellant was a first offender, he had pleaded guilty to the charge and thereby, saving the precious time of the Court, it was also stated that he had a number of dependants, who solely relied on him. Additionally, he had been in remand for a year or so.

In the view of Mr. Kalonga, if the learned trial Judge could have considered those mitigating factors without basing on the aggravating factors only, he would have arrived at a lesser sentence to the one which he imposed. He thus implored us to re-consider the mitigating factors of the appellant and as a result, we be pleased to allow the appeal by reducing the sentence of twelve years' (12) imprisonment to a lesser one.

The response from Ms. Mwakyusa, on behalf of the respondent/Republic to what was submitted by her learned friend, was to the effect that the appeal by the appellant is without founded basis. This was so for the reason that, before sentencing the appellant, the learned trial Judge dispassionately considered both the aggravating factors and the mitigating factors as revealed from the contents of the sentencing part. Bearing in mind the fact that, the offence committed by the appellant carries a maximum sentence of life imprisonment, the period of twelve years meted out was justifiable. As such, it was improper and untrue for the appellant to contend that, the mitigating factors of the appellant were not considered. She therefore urged us to dismiss the appeal in its entirety.

What stands for our deliberation in this appeal, is whether the sentence which was imposed to the appellant by the learned trial Judge was excessive. For a start, we would wish to re-state the principle governing sentencing that, it is in the domain of the trial court. The appellate Court can alter or interfere with the sentence imposed by the trial court, where there are good grounds for so doing. Among such good grounds were named in the case of **Swalehe Ndugajilunga Vs Republic** [2005] TLR 94 to include, **one,** where the sentence is manifestly excessive; **two**, where the sentence is manifestly inadequate; **three**, where the sentence is based upon a wrong

principle of sentencing; **four**, where the trial court overlooked a material factor, and **five**, where the sentence is plainly illegal.

See also: **Silvanus Leonard Nguruwe Vs Republic,** [1981] TLR 66, **Ilole Shija Vs Republic,** Criminal Appeal No. 357 of 2013, **Shabani Yusufu Mfuko Vs Republic,** Criminal Appeal No. 140 of 2012 and **Abdalla A. Njugu Vs Republic,** Criminal Appeal No. 495 of 2007 (all unreported).

Our task therefore in this appeal, is to gauge in the light of the grounds enumerated above, as to whether there is need for our interference with the sentence which was imposed to the appellant by the learned trial Judge. In sentencing the appellant, the learned trial Judge stated in *verbatim* as follows:

> *"The aggravating factors according to Ms. Barabara (State Attorney), are that there was no fight or provocation when the accused stabbed the deceased. He had a dangerous weapon, a knife that he stabbed the deceased's vulnerable parts of her body to wit; her abdomen, cheek and right arm that led to excessive bleeding and death. In addition, the accused ran away from the scene after the attack.*

On the other hand, he is a first offender, has a wife and two issues dependent on him, has readily admitted committing the crime before the police, the justice of peace and before this Court and has been in remand for about a year.

I think the circumstances show the attack on the deceased was intentional since he carried a knife and stabbed the deceased on vulnerable parts of her body *that let to severe blood loss and ultimately her death in hospital some three days later. The argument that the deceased stole the accused person's money is not a good reason for the attack since there are appropriate organs/authorities to lodge such complaint. The defence of provocation also cannot shield the accused as there was none."*

[Emphasis supplied]

In view of what was stated above by the learned trial Judge, we are on our part, unable to buy the contention by Mr. Kalonga that, he did not

consider the mitigating factors of the appellant. We are pretty satisfied that the fact that the appellant was a first offender, readily pleaded to the charge, was in remand for a year or so and that he had dependants, were put into consideration by the learned trial Judge. And upon weighing them with the circumstances under which the offence was committed, the nature and number of injuries inflicted to the deceased's body as well as the act of the appellant after the incident, made the learned Judge to reach at the extent of the sentence which he imposed.

The only correction which we would wish to make is in regard to the observation which was made by the trial Judge in the bolded part of the third paragraph above, where he stated that the killing of the deceased was intentional. With due respect, from the facts of the case placed before the Court, the stabbing of the deceased by the appellant was not intentional and no doubt that is why he was charged with manslaughter. Nonetheless, the same had no effect on the sentence which was imposed to the appellant.

Either the contention by the learned counsel for the appellant that, in committing the offence, the appellant was under the influence of pombe (alcohol), finds no support from the record of the court implying that it was a new argument. As correctly put by the learned State Attorney, such a factor was brought as an afterthought of which, we reject.

Consequently, we find the appeal by the appellant wanting in merit and, we dismiss it in its entirety.

Order accordingly.

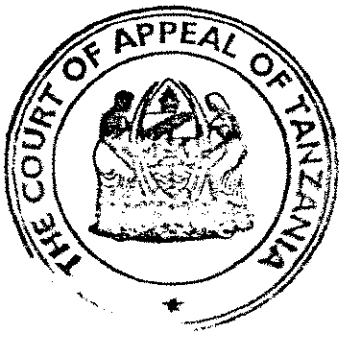
DATED at **DODOMA** this 20th day of August, 2019.

B. M. MMILLA
JUSTICE OF APPEAL

S. S. MWANGESI
JUSTICE OF APPEAL

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

The Judgment delivered this 21st day of August, 2019 in the presence of the appellant in person, Mr. Fred Kalonga, learned counsel for the appellant and Ms. Catherine Gwaltu, Senior State Attorney for the Respondent/Republic is hereby certified as a true copy of the original.



S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL