

# **IN THE HIGH COURT OF TANZANIA**

## **AT DODOMA**

**(DC) CRIMINAL APPEAL NO. 76 OF 2008  
(ORIGINAL CRIMINAL CASE NO. 68 OF 2006 OF THE  
DISTRICT COURT OF KONDOA AT KONDOA –  
BEFORE – J.P. MTUIY, PDM)**

---

**MAJIDI ALLY KATANGA..... APPELLANT  
versus  
THE REPUBLIC .....RESPONDENT**

**06/05/2005 & 15/05/2009**

### **JUDGEMENT**

**HON. MADAME, SHANGALI, JUDGE.**

The appellant **MAJID ALLY KATANGA** was charged before the District Court of Kondoa with the offence of causing grievous harm contrary to section 225 of the Penal Code, Cap. 16, Volume I of the laws in the Criminal Case No. 68 of 2006.

It was alleged on 15<sup>th</sup> December, 2005 at about 6.00 p.m at Chang'ombe Kelema Balai village the appellant assaulted his wife Angelina Paulo because she prepared local green vegetables commonly known as '*mlenda*' instead of Sardine for his supper. Being annoyed and infuriated the appellant attacked his wife by using his fist and broke her two upper teeth causing her to suffer severe injuries amounted to grievous harm.

When the charge was read over and explained to the appellant before the trial District Court, he pleaded guilty to the charge and admitted all the facts which constituted the charge laid against him. The appellant was found guilty and convicted accordingly. He was sentenced to suffer eight (8) years imprisonment.

The appellant was dissatisfied with the term of imprisonment which he found it to be highly excessive and contrary to the law, hence this appeal.

In his memorandum of appeal he pointed out that according to section 225 of the Penal Code, the statutory maximum sentence for such an offence is seven years imprisonment but the trial District Court went beyond its powers and sentenced him to eight years imprisonment. On the second ground of appeal, the appellant complained that having pleaded guilty to the offence and being a first offender he should have been awarded a lesser sentence. He contended that his mitigations were not taken into consideration by the trial District Court and there were no aggravating circumstances to warrant such a stiff sentence against him. During the hearing of the appeal, the appellant complained that the commission of the offence was caused by domestic quarrel between him and his wife (complainant) and it was aggravated by the fact that they were all intoxicated at the material time. The appellant requested this court to interfere and reduce the harsh sentence imposed against him.

Miss Mwanda, Learned State Attorney who represented the respondent/Republic was all out in support of the appeal on the same two grounds submitted by the appellant. She stated that the trial District Court was wrong to sentence the appellant to serve eight years imprisonment because the maximum sentence for the said offence is only seven years imprisonment. She also argued that taking into consideration the fact that the appellant is a first offender who pleaded guilty and considering the circumstances of the case, the appellant deserved a lenient sentence.

I entirely agree with both sides and I am convinced that in the circumstances of the whole case, the sentence of eight years imprisonment was not only unlawful but also manifestly excessive and harsh. In determining this appeal I am guided by the law and decision in the cases of **YOHANA BALICHEKO Vs. REP (1994) TLR (CA); SILVANUS L. MGURUWE Vs. REP (1981) TLR – 66; SWALEHE HAMISI Vs. REP (1988) TLR – 139** and **TABU FIKWA Vs. REP (1988) TLR 48**, to mention but few. I am therefore, in the name of justice, entitled to interfere with the sentence imposed by the trial District Magistrate.

In doing so, and having taken into account that the appellant has already served a period of more than three years in jail since he was imprisoned on 27<sup>th</sup> February, 2006, I would therefore allow the

appeal to a limited extent by reducing the sentence of eight years imprisonment to such term of imprisonment as would result in the Appellant's immediate release from prison. The appellant should be released forthwith unless held on another separate matter.



**M.S. SHANGALI**

**JUDGE**

**15/05/2009**

Judgement delivered in the presence of Ms. Mdulugu, Learned State Attorney and Mr. Lussa, Learned Advocate and in the present of appellant in person todate 15<sup>th</sup> May, 2009.



**M.S. SHANGALI**

**JUDGE**

**15/05/2009**