

**IN THE HIGH COURT OF TANZANIA
AT MTWARA
CRIMINAL APPEAL NO. 132 OF 2018**

*Originating from Criminal case No.163 of 2018 in the District Court
of Mtwara at Mtwara*

**JOYCE STEPHEN APPELLANT
VERSUS
THE REPUBLICRESPONDENT**

22/01/2019 & 24/01/2019

JUDGMENT

TWAIB, J.

The appellant was convicted by the District Court, Mtwara, with being found in possession of traditional liquor, c/s 30 of the Traditional Liquor (Control of Distillation) Act, Cap.384 (R.E.2002). The conviction followed her own, unequivocal plea of guilty.

In mitigation, the appellant prayed for forgiveness. The learned Magistrate then sentenced her to serve five years imprisonment.

Aggrieved by the sentence, the appellant has filed this appeal. Her petition of appeal has a total of five grounds of appeal. They all lament that the sentence is excessive.

The section under which the appellant was convicted provides for a maximum of five years imprisonment. The learned Magistrate thought it fit to impose the same - the maximum – completely ignoring two important mitigating factors that were apparent on the face of the record: That the accused before him was a first offender, and that she had readily pleaded guilty to the charge.

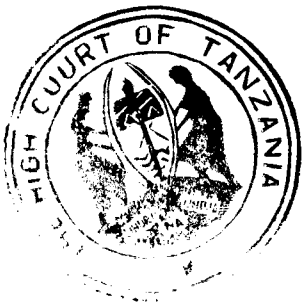
As Mr. Makasi, learned State Attorney who appeared for the respondent Republic submitted before me, the learned Resident Magistrate was wrong in imposing the maximum sentence. I cannot agree with him more.

Before me, the appellant has added another factor, which was not raised before the learned Magistrate: That she is seriously sick, having been admitted to hospital five times since her imprisonment, and suffering from anaemia and HIV complications.

This is a new factor that was not brought to the attention of the learned Magistrate, and he cannot be faulted for not having taken it into account.

All in all, therefore, taking the entire circumstances of the case, I would set aside the appellant's sentence of five year's imprisonment and substitute therefor a term of imprisonment that would result in her immediate release from prison.

It is so ordered.



A handwritten signature in black ink, appearing to read "F.A. Twaib", with a long, sweeping flourish extending to the right.

F.A. Twaib

Judge

24/01/2019