

**IN THE HIGH COURT OF TANZANIA
AT TABORA**

DC. CRIMINAL APPEAL NO. 83 OF 2019

*(Appeal from the decision of the decision of Urambo District Court
at Urambo, Criminal Case No. 138 of 2019)*

**DIRECTOR OF PUBLIC PROSECUTIONS APPELLANT
VERSUS**

**1. HAMIS HABI LUBEJA 1ST RESPONDENT
2. KULWA LUBEJA 2ND RESPONDENT**

JUDGMENT

Date of Last Order: 06/08/2021

Date of Delivery: 03/09/2021

AMOUR S. KHAMIS, J.

Before the District Court of Urambo the respondents Hamis Habi Lubeja and Kulwa Lubeja (a minor) were convicted on their own plea of guilty for the offence of Causing grievous harm c/s 225 of the Penal Code Cap 16 RE 2019.

The District Court sentenced the first respondent to serve one-year conditional discharge with a condition not to commit any criminal offence within that time and the second respondent was barred from committing any criminal offence within six months time.

Further, the Court went on to order every accused person to pay the victim a compensation of Tsh. 150,000/= within one month from the date of judgment.

The Director of Public Prosecution (DPP) was aggrieved with the sentence metted against the respondents hence this appeal. The appeal was premised on one ground, namely;

- 1. That, the learned trial magistrate erred in law by sentencing the accused person to 1 year and 6 years(sic) conditional discharge to such offence without adhering reason to his decision.*

When the appeal came up for hearing, Ms. Jaines Kihwelo, learned State Attorney, appeared for the DPP whereas the respondent appeared in person, unrepresented.

Submitting in support of the appeal, Ms. Kihwelo stated that, the respondents were charged with the offence of grievous harm under Section 225 of the Penal Code which did not give alternative sentence other than seven (7) years imprisonment. She went on to state that, the trial Court was mandated to give reasons for departing from the dictates of the law and since no reasons were assigned by the trial Court, she prayed this Court to set aside the Sentence metted to the respondent and sentence them accordingly.

In reply, both respondents submitted that, the sentence metted against them was proper and in that respect, they have already paid compensation to the victim.

Having considered the ground of appeal and submissions made in support and against it, the issue for determination is whether the trial Court properly sentenced the respondents.

The appellant's complaint in the ground of appeal is that the proper sentence for the offence of grievous harm is seven years yet, the respondents were sentenced to serve conditional discharge.

I have had time to go through the record of the trial Court particularly on the sentence imposed against the respondents on the offence they were charged with which is grievous harm c/s 225 of the Penal Code, and noted that the the maximum sentence is 7 years. The provision which creates such an offence uses the words "is liable to"

Section 74(4) of the Interpretation of Laws Act, Cap 1, RE 2019 provides for situations where a written law specifies for a minimum sentence to a specific offence that, the Courts may impose sentence not less than the minimum penalty specified in the law creating the offence.

As to the offence of grievous harm, Section 225 of the Penal Code, RE 2019 sets the maximum penalty to the offence but the section does not state minimum penalty. The Court practice is that if the law reads "**shall be liable to be sentenced**" then it sets out a discretionary sentence up to a maximum amount and if it reads "**shall be sentenced to.....**" then the punishment so prescribed, is mandatory. (*Refer to The Judiciary of Tanzania Sentencing Manual for Judicial Officers at page 4*)

Now it is clear from the above stated practice of the Court that, sentencing on the offence of grievous harm was discretionary to the trial Magistrate, hence the sentence metted against the respondent was within sentencing range to that offence.

That being the case, I am convinced that a conditional discharge to the respondents and payment of compensation was within the range of sentence in respect of that offence.

Moreover, the practice of the Court has made it possible by classifying sentencing range for the offence of grievous harm basing on seriousness of the offence.

At page 51 of the Judiciary of Tanzania Sentencing Manual for Judicial Officers three levels of sentencing in the offence of grievous harm, are listed; the High Level which has the range of 5-7 years imprisonment, Medium Level with a range of 3-5 years imprisonment and Low Level which has a range of conditional discharge to 3 years imprisonment.

Now, since the practice of the Court has classified sentencing jurisdiction for the offence under Section 225 into three levels the question comes, what circumstances made the trial magistrate to opt for the lowest level.

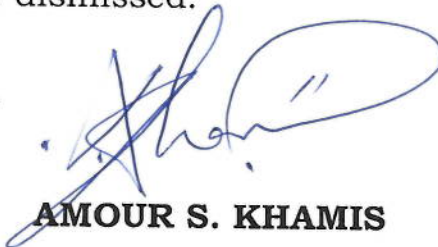
As per the facts admitted by the respondents it was stated that on 20th March, 2019 at about 11:00hrs at Ifuta Village within Urambo District in Tabora Region, both accused persons did harm one Daniel s/o John @ Kyanga on his head by using stick known as Mkoma.

That, major cause of the incident was an act by the two accused persons to lead their cattle in the victim's farm hence a fight occurred resulting to an injury on the victim.

The facts as they speak, no serious wounds or disability was caused to the victim and taking into account that injury occurred after a fight between the victim and the respondents, I find that the trial magistrate was proper in opting for the lowest range.

Having said and done, I find the appeal to be devoid of merits, and thus it is hereby dismissed.

It is so ordered.



AMOUR S. KHAMIS

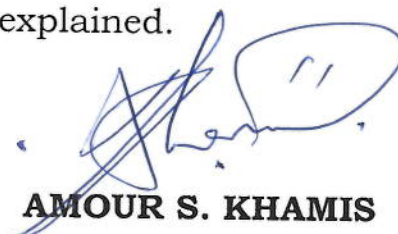
JUDGE

03/09/2021

ORDER:

Judgment delivered in chambers in the presence of Mr. Tito Mwakalinga, Learned State Attorney for the appellant and in absence of the respondents.

Right of Appeal explained.



AMOUR S. KHAMIS

JUDGE

03/09/2021