IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 151 OF 2014

DIRECTOR OF PUBLIC PROSECUTION.....APPELLANT

VERSUS

PAMELA FREDINAND .....RESPONDENT.

(Appeal from the decision of the Court of Resident Magistrates' of Kinondoni at Kinondoni)

(Kasailo- Esq, RM.)

Dated 26th February, 2014

in

Criminal Case No. 981 of 2011

JUDGEMENT

19th February & 9th April 2021

AK. Rwizile, J

This appeal is against sentence. Facts that led to this appeal can be clearly gathered that the respondent was arraigned at the Kinondoni Court of Resident Magistrates for the offence of causing grievous harm to one Magdalena Joseph contrary to section 225 of the Penal code. The respondent Pamela Fredinand lived under one roof with the respondent who is married to her in laws. It would appear, life was not all that good as they lived.

On 7th August 2011, the respondent poured on her body, a pot of hot water. The same was serious burnt all over her chest and some other parts of the body. The matter was reported to the police station. The respondent was arraigned. She was found guilty after a trial and convicted. She was then sentenced to a conditional discharge for 6 months and an amount of 500,000/= was imposed to her as compensation. The appellant was not satisfied with the sentence and so has advance this appeal. It was the basis of this appeal coached in one ground that the sentence imposed on the respondent ought to have been 5 years instead.

Upon filing this appeal, the respondent could not be traced. Following consecutive publications of the notice of this case on 24th, 26th and 28th

August 2020, in Habari Leo News paper at page 21, this appeal was heard exparte, since the respondent failed to appear to contest this appeal. The appellant being represented by Mr. Kisima learned State Attorney argued that the trial court was wrong by imposing a sentence that is illegal. It was his proposal that the offence the respondent was found guilty carries a minimum sentence of 5 years. He therefore asked this court to interfere with the same, because it is not adequate, as held in **R v Mohamed Jamaa** [1948] EACA.

Having, considered the submission, I have to state that section 225 of the Penal code is what creates the offence. It is states thus;

> *Any person who unlawfully does grievous harm to another is guilty of an offence and is liable to imprisonment for seven years.*

It is can be deducted from the law that apart from creating the offence, still, it creates the sentence to be imposed as 7 years imprisonment. It is elementary that sentencing powers of the subordinate courts are provided by law. Unless the offence charged is a scheduled one, courts have powers to impose the sentence that is provided by the law or as it has been provided by section 27(2) and 31 of the Penal code.

In the other perspective, where the offence is not set with a minimum sentence as I have stated before, the court has discretion to impose as sentence that is proportional to the offence charged. If the law provides a mandatory minimum term, then the same must be followed. Here, the trial court met the offence with a sentence not coached in the mandatory terms. The principle I am moved with is derived from the case of **TABU FIKWA v REPUBLIC** [1988] TZHC 10; (01 June 1988) (https://tanzlii.org/tz) where the court held;

> *Generally speaking, imprisonment is only justified if it is necessary that the criminal be removed from society. Save where the nature of the offence and the circumstances of its commission call for a custodial sentence, or where the nature of the offence and the circumstances of its commission call for a custodial sentence, or where the court has no discretion in the matter because the offence attracts a mandatory sentence of imprisonment under the Minimum Sentences Act, 1972, or under any other legislation, the court should seriously consider alternative punishments before sending an offender to prison, especially if he is a first offender*

I am therefore tempted to hold that in as much as the trial court imposed a sentence considered inadequate, it perhaps did so at its discretion after considering the manner in which the offence was committed. In the absence of any reasonable explanation to the contrary, I do not see any reason to interfere with the imposed sentence. I therefore, find this appeal without merit. It is dismissed.

AK. Rwizile
Judge
09.04.2021

Recoverable Signature

X

Signed by: A.K.RWIZILE

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY