

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY OF ARUSHA]

AT ARUSHA

CRIMINAL APPEAL NO. 69 OF 2022

(Originating from Criminal Case No. 102 of 2019 at the District Court of Karatu at Karatu)

THE REPUBLIC.....APPELLANT

VERSUS

WILLIAM AMAMU.....RESPONDENT

JUDGMENT

26 & 30 September, 2022

KOMBA, J

This is an appeal from the decision of the District Court Karatu in Crim Appeal No. 102 Of 2019 where the respondent was charged for the offence of Grievous harm contrary to section 225 of the Penal Code, [CAP 16 R.E 2002].

Summary of fact goes like this. On 5th April, 2019 at about 15:00 hrs at Ayalable village within Karatu District the respondent alleged to assault Pamphil Vicent on his head by using a bush knife@ *panga* and caused the victim to suffer grievous harm. He denied allegation when the charge was read to him hence the trial began where the prosecution had five witnesses and three exhibits.

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After prosecution side prove their case, the accused person had to make a defense and he was the only witness and was assisted by Advocate Noel Siay. After closing the defense side, the court raised only two issues which are;

- (i) *Whether there is a grievous harm.*
- (ii) *Who did.*

In determining the first issue, Senior Resident Magistrate defined grievous harm from the Advanced Learner's Dictionary, International Student's Six Edition as a crime of causing somebody serious physical injury. In other words, is causing somebody serious physical injury. According to PW4 who is the human being doctor at Karatu Health center when tendering exhibit P2 which was PF3 the doctor said it was a dangerous harm which caused by the sharp object whereby patient stitched multiples and the wound was deep. This cleared the first issue.

PW1 who was the victim, was the key witness to assist in answering the second issue where he said the cause of parties to cut each other during the fight was the dispute of ownership of piece of land which PW1 bought. The victim and respondent were neighbors, where by the victim did buy the said piece of land from the respondent mother. It is easily to know who did

that but again PW2 were together with the victim at the farm where he testifies that is the respondent person who cut the victim with a panga.

Under section 235 (1) of CPA the accused was convicted for offence charged, having no previous criminal record, he mitigated that he has a family who depend to him and pray for lenient punishment. The trial court sentenced the respondent for conditional discharge NOT to commit an offence within nine (9) months.

Being dissatisfied by the sentence imposed, State Attorney for Republic file petition of appeal with one ground challenging the sentence of conditional discharge not to commit an offence within nine (9) months.

During appeal the respondent didn't show up where by court order for the substituted service, the order which was complied for and the matter had to proceed. On 27th September, 2022 when the matter was scheduled for hearing, the same was conducted in the absence of respondent.

Ms. Akisa Mhando, Senior State Attorney representing Republic informed this court under section 365 (2) of CAP 16 that summons being published in normal circulating newspaper, then order was complied of and pray for hearing to continues, prayer which was granted.



Arguing for her ground of appeal, she said that offence under section 225 of CAP 16 was for grievous harm and the section provides for the punishment of seven years when the accused is found liable. Despite the use of word 'liable' confer the court with discretion to impose lesser punishment depending on the circumstances. Bearing in mind that, they find condition discharge sentenced imposed to respondent is more than a lesser punishment compared to nature of weapon used, the area which victim attacked was the head area which could cause death to the victim and lastly was the accession of the force toward PW1 was excessive. She argued further that despite the respondent had no previous record, that does not exclude him from severe punishment for offence he committed. She concluded by praying this court to revise the sentence.

Reasons adduced by State Attorney for the granting an appeal influence this court to invoke its power under **section 366 of Criminal Procedure Act**, CAP 20 R. E. 2022 which provides;

366.-(1) At the hearing of the appeal, the appellant or his advocate may address the court in support of the particulars set out in the petition of appeal and the public prosecutor, if he appears, may then address the court and thereafter, the court may invite the appellant or his advocate to reply upon any matters of law or of fact raised by the

public prosecutor in his address and the court may then, if it considers there is no sufficient ground for interfering, dismiss the appeal or may-

(a) in an appeal from a conviction

(i) Reverse the finding and sentence and acquit the accused or discharge him under section 38 of the Penal Code or order him to be re-tried by a court of competent jurisdiction.

(ii) or direct the subordinate court to hold committal proceedings;

(iii) alter the finding, maintaining the sentence or, with or without altering the finding, reduce or increase the sentence; or

(iv) with or without such reduction or increase of sentence and with or without altering the finding, alter the nature of the sentence.

b) in an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence;

Respondent was convicted for offence which its punishment is statutorily provided. Section 225 of CAP 16 reads-

'Grievous harm

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

Be that all, I in the spirit of Section 366 as cited above, I hereby alter the sentence imposed to respondent by the District Court from one of conditional

discharge not to commit an offence within nine (9) months to imprisonment for five years running from the date which respondent will be apprehended.

Under My Hand.


M. L. KOMBA

JUDGE

30/09/2022

Judgement delivered in chamber this 30th day of September, 2022 in Chamber in the presence of Applicant and in the absence of Respondent.




M. L. KOMBA

JUDGE

30/09/2022