

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB REGISTRY)**

AT MWANZA

IN THE CRIMINAL APPEAL NO 24 OF 2023

(Arising from Geita District Court Original criminal case 175/2022)

SIMON S/O MUHOZYA APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGEMENT

13TH May, 2024

A. MATUMA, J.

The appellant was charged and convicted for grievous harm contrary to section **225** of the penal Code, Cap 16 R.E 2002.

He was alleged to have beaten one Sifa d/o Amos (his own wife) on different parts of the body and causing her to suffer grievous bodily harm.

It is on record that the appellant pleaded guilty and admitted all the facts constituting the offence and thus he was convicted on his own plea of guilty.

The trial magistrate sentenced him to four years custodial term.

The appellant was aggrieved by both conviction and sentence hence this appeal with four grounds of appeal which raises two major complaints namely; -

- i. That the trial court erred to treat his plea as unequivocal plea of guilty.
- ii. The sentence entered was severely excessive.

At the hearing of this appeal, the appellant was present in person while the respondent was represented by Sara Perias learned state attorney.

The appellant being a lay person did not have much to submit. He only invited this court to allow his appeal and set him free maintaining that he was caused to sign the proceedings which he did not know and was severely sentenced despite the fact that he was arrested and deserted into custody for a long time.

On her part, Sara Perias Learned State Attorney drew attention of the court to the provisions of **section 360 (1)** of the criminal Procedure **Act, Cap 20 R.E 2022** which bars appeals resulting from convictions on one's own plea of guilty save for certain circumstances as was elaborated in the case of **Laurent Mpinga versus The Republic, (1983) TLR 166.**

In the instant case, the learned State Attorney argued that the appellant's plea was unequivocal as he clearly pleaded to have assaulted the victim and admitted all the facts which constituted the offence of grievous harm. She cited the case of **Charles Samweli Mbise versus The Republic, Criminal appeal No. 355 of 2019** to the effect that when the accused

admits the facts constituting the offence his plea is taken to be unequivocal. About the sentence, the learned state attorney argued that it meets the circumstance and it is not severe. She pointed out that the maximum sentence for the offence is seven years but the appellant was sentenced to only four years.

Having been probed by the court, the learned state Attorney admitted that the contents of exhibits tendered against the appellant were not read to the appellant whose effect is to expunge such exhibits but argued the court not to take that course.

On whether the mitigating factors of the appellant were considered during sentencing, the learned State Attorney admitted that the records do not reflect. She however maintains that four years custodial sentence is to the lowest side of the maximum sentence which the appellant would have otherwise sentenced.

On my party, I agree with the learned State Attorney that the plea of the appellant was unequivocal for he pleaded with clear words that he did beat the victim.

He also admitted the facts which reflected that he used the stick to beat the victim on various parts of the body.

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a horizontal line extending to the right. Below the signature, the number '3' is written in blue ink.

Under the circumstances I entertain no doubts that the appellant committed the offence and his plea of guilty was unequivocal. I therefore reject his first set of complaint which tries to challenge his plea.

I however find that the exhibits tendered against him were not read to reveal its contents to the appellant and avail him opportunity to comment anything thereof.

In that respect the exhibits namely, caution statement (exhibit P1) and PF3 (exhibit p2) are hereby expunged.

That being done, it is obvious that the extent of injuries inflicted by the appellant to the victim remains unestablished. That does not however take away the truth that the appellant assaulted the victim by using a stick. It only lowers the gravity of the offence to either common assault which is punishable for one year or assault causing bodily harm which is punishable for five years.

About the sentence, as admitted by the learned State Attorney, the trial Magistrate did not consider the mitigations of the appellant at all. The records shows that only the aggravating factors were considered;

"After taking into consideration the gravity of the offence the accused is convicted of and the provision of the penal code in respect of the same, this court hereby sentenced the accused to a four years imprisonment terms"

That sentence indicates clearly that it ignored the mitigations of the appellant in which the appellant had stated that his wife had a "jipu" on her leg which bursted and became the source of his arrest.

Construing such mitigation, I find that the appellant was linking the bursting of the so called "jipu" with his arrest.

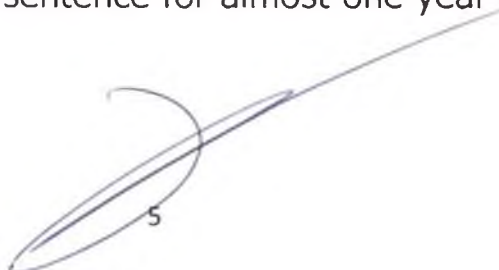
The court should have inquired from the appellant what he did leading to the burst of such "jipu" more so when the appellant is a lay person.

That would assist the court to ascertain the real intent of the stated assault and the extent of such assault to determine the appropriate sentence.

Be it as it is, failure to consider the mitigations of the convict has always been considered wrong and under the circumstances, the appellate courts have always been reducing the infriicted sentence.

In the circumstances of this case where the mitigations were not considered and the fact that the PF3 has been expunged which would have otherwise established the extent of injuries inflicted to the victim, I find that the sentence of four years is not justified. I therefore set it aside.

By considering that the appellant was convicted on 18/01/2023 and thus has been in custody serving the sentence for almost one year and five months,

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a horizontal line and a small 'S' at the end.

I replace the custodial sentence meted against him to the sentence which would lead to his immediate release.

This appeal against conviction is thus rejected but appeal against sentence allowed. Right of further appeal is explained.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A. Matuma", is written over the printed name.

A. Matuma

Judge

13.05.2024