

TANZANIA / JUDGMENT

20090908 TZCA Mbeya

COURT
TZCADECIDED
8 September 2009

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE COURT OF APPEAL OF TANZANIA AT MBEYA (CORAM: KILEO, J.A., BWANA, J.A., And MJASIRI, J.A.) CRIMINAL APPEAL NO. 68 OF 2007 ROBERT ARON APPELLANT VERSUS THE REPUBLIC RESPONDENT (Appeal from the decision of the High Court of Tanzania at Mbeya) (Mrema,J.) dated the 9th day of March, 2004 in Criminal Sessions Case No. 73 of 2003 JUDGMENT OF THE COURT 7 & 9 September 2009 BWANA, J.A.: Initially the appellant was charged with murder. The offence was, however reduced to Manslaughter contrary to Section 195 of I the Penal Code. He pleaded guilty to this lesser offence. He was sentenced to a prison term oftweny years. He now appeals against that sentence, raising two grounds in his Memorandum of Appeal namely- .(2

1. That the sentence of 20 years in prison is manifestly excessive in the circumstances of this case.
2. That the learned trial judge erred in law and fact in not considering the mitigating factors which were in favour of the accused. In his submission_ in support of the appeal, Mr. Victor Mkumbe, learned counsel for the appellant, is of the view that the trial judge took into consideration only the views expressed by the prosecution sid~, ignoring the mitigating factors that had been raised by the appellant. The appellant had found his wife in flagrant delicto with another man. In a heat of passion he stabbed her in the neck region, thus leading to her death as described in the Post-Mortem Report. It is Mr. Mkumbe's further submission that the trial judge I failed to consider the mitigating factors by not for example, considering the facts that the deceased contributed to her own death by committing adultery; that the appellant was a first offender; that he had been in remand prison for a considerable long period; and 3 ; that he had three children to look after. Mr. Mkumbe was of the further views that in meting out such severe sentence, the trial judge allowed himself to be influenced,' by matters that were purely speculative. Matters such as confes?ing that the appellant had never committed adultery or that he was, morally clean were never raised during the hearing of the case. Mr. Ayub Mwenda, learned State Attorney, did not oppose the I appeal ostensibly on the same arguments as raised by counsel for the appellant: Both counsel urged this Court to take into I consideration principles of sentencing as applicable in our jurisdiction. The facts of this case as discerned from the record may be I stated briefly as hereunder. The appellant and one Beatha Aporinali were husband and wife. On 23

August, 2001 at Ifupa Village within Mbeya District, the appellant came home at around 8.00 p.m. but his wife - the deceased - was not there. He went in search of her and eventually found her having sexual intercourse with another man. That other man managed to run away. The appellant was armed with a knife. Therefore, upon finding his wife in flagrant delicto, he took his knife and cut her throat. She fell down and died on the spot. A post mortem examination carried out at the Mbeya Referral Hospital, established that the cause of death was - "Haemorrhagic shock and vasovagal shock ... cut wound on the neck (sic) severing the neck and major blood vessels of the neck (carotid, jugular) ... no fracture except of cervical ... " As stated hereinabove, this is an appeal against sentence only. Manslaughter carries a maximum sentence of life imprisonment. Given the circumstances of this case, can the 20 years prison term imposed by the trial judge be said to be harsh and excessive? We do agree with both counsel that the trial judge allowed himself to be influenced by issues which were not part of the record. ' 5 Questioning the moral turpitude of the appellant, while that was not an issue before the trial court was, in our considered opinion, erroneous. Likewise, imposing a sentence of twenty years imprisonment so as to act as "a deterrent and exemplary sentence not only as a lesson to the accused but also to the potential wrongdoers of the like of the accused ... " needed more justification and elaboration. It has been held by this Court in several of its decisions that an appellate court should not interfere with the discretion exercised by a trial court while imposing a sentence, save in cases and circumstances where it is apparent that the said trial court acted upon a wrong principle or erred in its both law and factual analysis or a further, that given the circumstances of the case, the said sentence was manifestly excessive (see *Silvanus Nguruwe vs Republic*, 1981 TLR 66; *Bernadeta Paul vs Republic* - 1992 TLR 97; *Rashid S. Kaniki vs Republic* - 1993 TLR 258; *Yohana Balicheko vs Republic* - 1994 - TLR 5 (CA); *Mohamed Ratibu @ Saidi* - Criminal Appeal No. 11 of 2004, unreported; *Samwel Vose @ Kijangwa vs Republic* - Criminal Appeal No. 208 of 2005; and *John Mbua vs Republic*, Criminal Appeal No. 257 of 2006 - (unreported). Courts of law are mindful of the well settled principles on sentencing. Several factors have to be taken into consideration. These include (but not limited to) the following. First, and foremost, is the seriousness of the offence. Seriousness may be seen from the gravity of the offence as well as/or the extent of injury suffered by the victim. The former connotes societal revulsion to the kind of offence committed. The latter, is indicative of the physical, mental or psychological sufferings on the part of the victim. In the latter situation, it is desirable that a trial court conducts a kind of "victim impact assessment" before imposing a desired sentence. Second, the court must, as well, take into consideration the factors leading to the commission of the offence. In the instant case, for example, the trial court ought to have taken into consideration whether the appellant's act of killing his wife by severing her neck, upon finding her in flagrant delicto with another man was excusable. The trial court, having taken into consideration the foregoing needed to tell society - by way of sentence - that treating one's spouse in the way the appellant did, was either acceptable or unacceptable to any civilized society. If the latter is the case, then the accused should be accountable for that unbecoming action by suffering a sentence commensurate with the offence committed. The foregoing considered, can it

then be said that the trial court herein erred in imposing a twenty years prison term? Having considered all the factors surrounding this case, such as the appellant I finding his wife in flagrant delicto; severing off her neck; the trial judge being influenced by speculation - and the like, we are nevertheless satisfied that the sentence imposed was commensurate with the offence. I I 8 It is well settled that an appellate court should not alter a sentence imposed by a trial court on the mere ground that if it were sitting as a trial court it would have imposed a different sentence. In the case of Dingwal vs Republic (1966) Seychelles Law Reports, 205, it was stated: ..."an appeal court will only alter a sentence imposed by a trial court if it is evident that the said trial court has acted on a wrong -principle, or overlooked some material factor; or if the sentence so imposed is manifestly excessive in view of the circumstances of the case ... an appeal court is not empowered to alter a- sentence on the mere ground that if it had been trying the case, it might have passed a somewhat different sentence ... " In the instant appeal, we have taken into consideration the brutal nature with which the victim met her death at the hands of her husband, the appellant Likewise, his mitigating factors-presented. before the trial court considered, do not convince us to alter the 9 I sentence imposed by the trial court. The offence with which the appellant was convicted and, sentenced to twenty years I I imprisonment, carries a maximu'm life prison term. I We do not I I I consider the sentence of· twenty years, to be either harsh or excessive in the circumstances. Therefore this appeal against'~sentence is dismissed. 1 DATED at MBEYA this 8th day bf September, 2009. ' E. A. KILEO JUSTICE o'F APPEAL I I I S. J. BVyANA ·JUSTICE OfI .APPEAL I S. MJASIRI I JUSTICE OF. APPEAL I certify that this is a true copy of th~ original. ' I J. S. MGEjTTA DEPUTY REGISTRAR

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/328419/source_file/2d249a9ddad34117/20090908_TZCA_Mbeya.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/20090908-tzca-mbeya-2009>

Prepared on 14 October 2026 · Esheria