

TANZANIA / JUDGMENT

20101223 TZCA Dar es Salaam

COURT
TZCADECIDED
23 December 2010

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

IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM
(CORAM: RAMADHANI, C.J., MBAROUK, J.A., And BWANA, J.A.) CRIMINAL REVISION NO. 1 OF
2010 THE REPUBLIC PROSECUTOR/RESPONDENT · VERSUS RASHID I
ALLY @ NAMTEMA ACCUSED/ APPLICANT (Revision from the Decision of the
High Court of Tanzania at Mtwara) (Mandia, J.) dated the 5th day of June, 2002 in Criminal
Sessions Case No. 4 of 2001 RULING OF THE COURT 8 th & 23rd December, 2010 MBAROUK, J.A.:
Before us, is a revision proceeding prompted by the Court under section 4 (3) of the Appellate
Jurisdiction Act, Cap. 141. The record shows that, one Rashid Ally @ Namtema (the accused
person) was convicted on his own plea of guilty to the offence of manslaughter contrary to
section 195 of the Penal Code. The High Court (Mandia, J.) at Mtwara sentenced the accused
person to twenty (20) years imprisonment. It seems the accused person was dissatisfied with
the sentence, he wrote his complaint to the Hon. Chief Justice who ordered this revision. Briefly
stated, the facts are as follows, on 27-9-1998 at Mdenga area in Mtwara town, the accused killed
one Rukia Likuna. On the fateful day, the accused was drunk. He quarreled with his younger
brother called Hassani Rashidi who ran away to save himself. The accused wanted to stab his
younger brother with a knife. The younger brother evaded the knife thrust and this led to the
accused person stabbing an innocent woman (the deceased) who was seated nearby. However,
the accused and the deceased who were neighbours, lived without any ill feelings towards each
other. At the hearing, Ms. Evetha Mushi, the learned Senior State Attorney for the prosecutor
Republic, briefly submitted that the sentence imposed to the accused by the trial court was a
proper sentence. She said, section 195 of the Penal Code states that any one found guilty of
manslaughter is liable to life imprisonment. The learned Senior State Attorney urged us to find
that the twenty years

- i.e., 3 imprisonment sentence is not excessive. In support of her argument, she referred us to
the decisions in the cases of *Silvanus Leonard Nguruwe v R* [1981] TLR 66 and *R v Mohamed
Ali Jamal* [1948] 15 EACA 126. Ms. Mushi further submitted that the conditions stated in the
case of *Silvanus Leonard Nguruwe* (supra) were considered by the trial judge when
sentencing the accused, hence there is no reason to fault him. On her part, Ms. Dosca
Mutabuzi, learned counsel for the accused, submitted that the learned trial judge failed to
consider the circumstances in this case. She said, the record shows that the accused was
drunk while he was chasing his younger brother. She added that the accused was in good

terms with the deceased. Furthermore Ms. Mutabuzi said, the accused pleaded guilty to the offence charged against him without any difficulty. Also, she said that her client had stayed in remand prison for three and a half years before he was sentenced. In support of her argument, she referred us to the decisions of this Court in *Swalehe Ndungajilungu v. Republic* [2005] TLR 94 and *Saidi Omari Kombo v. Republic*

[2000] TLR 315. She contended that in both the authorities she cited to us, the Court was of the considered opinion that this Court cannot alter a lawful sentence imposed by the High Court except if there are special circumstances. She further submitted that the accused has already served twelve years in jail. Under those circumstances, she urged us to find the sentence of twenty (20) years imposed to her client be found excessive. It is trite law that an appellate court should not interfere with the discretion exercised by a trial judge in a matter of sentence unless it is evident that he has acted upon some wrong principle or over-looked some material factors. See for instance, in the case of R

v. Mohamed Ali Jamal (*supra*) the erstwhile Court of Appeal for Eastern Africa stated that:- "An appellate court should not interfere with the discretion exercised by a trial judge as to sentence except in such cases where it appears that in assessing sentence the judge has acted upon some wrong principle or has imposed a sentence which is either patently inadequate or manifestly excessive." The same principle was used in the decision of this Court in the case of *Bernadeta Paul v. Republic* [1992] TLR 97. However, in the case of *Silvanus Leonard Nguruwe v. R*

[1981] TLR 66 at p. 67 this Court enumerated the circumstances which a trial judge should consider when assessing sentence, where it was stated that:- "One of such circumstances which were referred to us by Mr. Jadeja in his submissions is the fact that the learned trial judge did not give due weight to the fact that although the appellant was clearly guilty of assaulting the deceased, his conduct (, could not properly be described as vicious in view of the prosecution's own concession that the appellant hit the deceased only once with a stick. The 6 other factors which, in our view, were material to the assessment of appropriate sentence in the case but which, once again, the judge appears not to have considered are the advanced age of the appellant; the period of two years which he spent in remand custody before being brought to trial; and lastly, the fact he pleaded guilty to manslaughter thereby saving the trial court and the Republic from needless trouble and expense both in time and money." (Emphasis added.) The wisdom acquired from the decision in the case of *Silvanus Leonard Nguruwe* (*supra*) is that, even if the appellate court is required not to interfere with the discretion exercised by a trial judge as to sentence, but if the trial court fails to consider those factors, the appellate court may step in and alter the sentence. However, the only point to note is that, the list may not be exhaustive due to variation of facts in different cases. 7 The recent decision of this Court in *Sospeter Zacharia v. Republic*, Criminal Appeal No. 121 of 2007 (unreported) quoted with approval the decisions in *Silvanus Nguruwe* (*supra*), *Bernadeta Paul* (*supra*) and *Francis Chilema v. R* [1968] H.C.D 510. In considering those factors, for example, the issue whether

the accused has pleaded guilty to an offence has been given a paramount position. See for instance, the decision in the case of Francis Chilema (supra) where the accused pleaded guilty and the Court stated as follows:- "It is generally, if not universally, recognized that an accused pleading guilty to an offence with which he is charged qualifies him for the exercise of mercy from the court. The reason is, I think obvious, in that one of the main objects of punishment is the reformation of the offender. Contrition is the first step toward reformation, and a confession of a crime, as opposed to brazening it out, is an indication of contrition. Therefore in such a case a court can, and does impose, a milder sentence than it would have done." (Emphasis added.) In the instant case, the accused pleaded guilty to the offence against him. He was remanded in custody for three and half years and currently he is on parole until the year 2015 after he has served twelve and a half years in prison. Apart from that as the facts have shown while the accused wanted to stab his younger brother with a knife, his brother evaded and that led to stab the deceased unintentionally who was seated nearby. The facts also showed that the accused and the deceased who were neighbours lived without any ill feelings towards each other. At this juncture, even if in Francis Chilema (supra) the aspect of pleading guilty was the only one earmarked, we are increasingly of the view that other factors indicated in the case of Silvanus Nguruwe (supra) has been met in this case to strengthen the position to qualify us to exercise leniency and give a milder sentence to the accused. In the event, we are of the considered opinion that the accused qualified for the exercise of mercy from the court and should have been given a milder sentence than the one imposed on him. We think, the sentence he has already served is sufficient. For those reasons the twenty years imprisonment sentence is hereby accordingly set aside and substitute it with a sentence to such term of imprisonment which would result to his immediate release, unless otherwise he is held in connection with another matter. It is so ordered. DATED at DAR ES SALAAM this 19th day of December, 2010. A.S.L. RAMADHANI CHIEF JUSTICE M.S. MBAROUK JUSTICE OF APPEAL SJ. BWANA JUSTICE OF APPEAL I certify that this is a true copy of the original. Signed (J.S. MGUMU) 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/333245/source_file/d1d264883a2b8168/20101223_TZCA_Dar_es_Salaam.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/Sentencing-tzca-2010--6a3ea5273b1caa912981e8e7>

Prepared on 23 October 2026 · Esheria