

TANZANIA / JUDGMENT

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26 September 2008

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O/t j IN THE COURT OF APPEAL O TANZANIA AT TABORA (CORAM: RAMADHANI, C. 3.; MROSO, J. A. And MUNUO, J. A.) CRIMINAL APPEAL NO. 135 OF 2005 BETWEEN NYANZALA MADAHA ... APPELLANT AND THE REPUBLIC .*. RESPONDENT (Appeal from the decision of the High Court of Tanzania at Tabora) (Mwita, 3.) dated the 14th day of June, 2005 in Criminal Sessions Case No. 88 of 1999 JUDGMENT OF THE COURT 17 & 26 September, 2008 RAMADHANI, C. 3.: The appellant, Nyanzala Madaha, was charged with the murder of her mother-in-law but her plea of guilty of manslaughter was accepted and she was accordingly convicted. This is her appeal against a twelve years sentence of imprisonment meted to her. On her behalf was Mr. Kamaliza Kamoga Kayaga, learned advocate, with a memorandum of appeal containing one ground of appeal, to I wit: That under the circumstances of this case the trial court overlooked a material factor and the sentence of 12 years imprisonment on the appellant was excessive. Mr. Kayaga conceded that there are certain principles guiding this Court as to when it can interfere with the sentences meted out by 2 / the High Court as was enunciated in Swalehe Ndunqajilungu v. R, ii Criminal Appeal No. 84 of 2002 and followed in Samwel Yo_ Kijangwa v. R., Criminal Appeal No. 208 of 2005. He pleaded with us that we add a seventh principle that the time an accused person has spent in custody awaiting trial, that is, from the time of arrest to the date of sentence, should be taken into account. In the instant appeal Mr. Kamoga pointed out that the appellant had been in custody for eight years. He argued that the term of sentence of twelve years added to that period comes to a total of twenty years. That; he submitted, should have been taken into account. On the other hand, Mr. Manyanda pointed out that the maximum punishment for manslaughter is life imprisonment so, he contended, the term of twelve years meted out to her took into account the period spent in remand custody. At the trial the appellant gave four mitigating factors which included the fact that she had been in custody for eight years. Mr. Kayaga replied to the Court that if the trial court considered that period in remand then it did not give it the weight it deserved. The stand of this Court in cases of appeal against sentence is that it will not interfere on the mere ground that had it been the trial court it would not have imposed that sentence - Silvanus Leornard Nguruwe v. R. [1982] TLR 66. However, this Court has accepted six ii situations in which it can interfere with a punishment. These principles are enumerated in Swalehe Ndunqajiluu and Samwel Yose © Kijangwa which are: 'I i)Where the sentence is manifestly excessive or it is so excessive as to shock. ii)Where the sentence is manifestly inadequate. Where the sentence is based upon a wrong principle of sentencing. Where a trial court overlooked a material factor. v)Where the sentence has been based on irrelevant

considerations, such as the race or religion of the offender. vi) Where the sentence is plainly illegal, as when, for example, corporal punishment is imposed for the offence of receiving stolen property. Admittedly, the fact that the appellant had been in custody for eight years was brought to the attention of the trial Judge but we are a shade unsure whether it was given the weight it deserved as properly contended by Mr. Kayaga. Eight years in custody is a long period of time to await trial. We are aware that there are instances of greater periods of time than this but that should not be a justifying factor. The period of time spent in custody is a result of problems with the administration of justice in this country. So, it is our considered opinion that that period should not be loaded on the accused persons who are helpless and cannot do anything about it. Trial courts should take such periods into account and if that is not evident appellate courts should interfere. This Court in *Bernadeta Paul v. R.* [1992] TLR 97 said at p. 100: It is our considered view that had the learned judge taken into account appellant's plea of guilty to the offence with which she was charged she would no doubt have found that the appellant was entitled to much more lenient sentence than the sentence of 4 years she imposed. This is especially so taking into account that the appellant had but for this conviction an unblemished record and, if we may also mention, she had been in remand for about five years with the serious charge of infanticide hanging on her. Taking all these factors into account we agree with Mr. Maruma, learned defence counsel, that this was a case that loudly cried for leniency. The Court ordered her immediate release from custody. The present appeal is very much similar to that one. The appellant here pleaded guilty though to a lesser offence but the plea was / accepted. There was no mention of a blemished record at the High Court on her part, too. Then this appellant has been in custody for eight years "with the serious charge of [murder] hanging on her". Now, if remand period of five years and a sentence of four years making a total of nine years caused this Court to interfere, we ask 5 why should it not be the case where the remand period is eight years and the sentence is twelve years making a total of twenty years? We are of the decided view that time spent in remand by an accused person should be a seventh factor in which an appellate court could interfere with a sentence passed by a trial court. We set aside the sentence of twelve and substitute it with one of six years from the date she was sentenced by the High Court, that is, on 14th June, 2005. DATED at TABORA this 26th day of September, 2008. A. S. L. RAMADHANI CHIEF JUSTICE

3. A. MROSO JUSTICE OF APPEAL E. N. MUNUO JUSTICE OF APPEAL I certify that this is a true copy of the original. P. B. KHADAY DEPUTY REG1SRAR

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Prepared on 14 October 2026 · Esheria