

TANZANIA / JUDGMENT

samweli cr

COURT
TANZLIIDECIDED
1 January 2023

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

IN THE HIGH C O U R T OF TH E U NITED R EP U B LIC OF TAN ZAN IA M AN YA R A SU B -R EG
IS T R Y AT BABATI .C R IM IN A L REVISION NO. 16791 OF 2024 SAMWELI ACHISO
ERBALO.....1st APPLICANT AKILILOL
ALAMU..... 2nd APPLICANT MARXA
ALAMU.....3rd APPLICANT EPHREM
MELES.....4TM APPLICANT ELIYAS WONDIMU
HIRIGO..... 5TM APPLICANT LIRE TASFAYE
ZALK..... 6TM APPLICANT MAMUSHI
DESIA..... 7TM APPLICANT MERAUT TAMERA
OSAMO.....8TM APPLICANT BIREHANU
ASAFA..... 9TM APPLICANT MUSAMA
SULTANE.....10TM APPLICANT TAMRAT
ABABA..... 11TM APPLICANT ARABO
TERABO..... 12TM APPLICANT ZAMDIKUN DAGALA
ABABA..... 13TM APPLICANT MABURATU
INDESHA..... 14TM APPLICANT ZELEKE
GIZACHO.....15TM APPLICANT ZEYNADIN
HUSSEIN..... 16TM APPLICANT SAMUEL DAPHORE
TARE..... 17TM APPLICANT MAJAMO
ARGO..... 18TM APPLICANT ADNE
KABAMO..... 19TM APPLICANT VERSUS THE
REPUBLIC..... RESPONDENT

RULING

1 |P ag e 2nd & 5th July; 2024 Kahyoza, J.: The applicants were foreigners, Ethiopians by nationality, were charged, with the offence of unlawfully present within Tanzania contrary to section 45 (1)(i) of the Immigration Act, [CAP. 54 R.E. 2016]. They pleaded guilty to the charge. They were convicted upon their own plea of guilty and sentenced on 04/04/2024 to serve 18 months in prison or to pay fine of Tzs. 1,000,000/= (One Million). During inspection, I entertained doubts whether the sentence imposed was justifiable in the circumstance and facts of this case. I ordered Revision to be opened suo mottu to consider the propriety or correctness of the sentence given to applicants as first offenders. Thus, the issue is the whether the sentence is appropriate or

was justified in the circumstance of this case. Was the sentence appropriate or justified? Generally, the applicants had nothing substantive to submit regarding the issue and some of them contended that the sentence was excessive. Ms. Blandina Msao, the learned state attorney did not support the sentence. She argued that the sentence was on high side. She contended that the applicants being the first offenders who pleaded guilty deserved to be treated leniently. In addition, she argued that 2 |P a ge some of the applicants were 18 years old, who should not have been sentenced to a custodial sentence. Going through the sentence imposed by the Resident Magistrate, I join hand with the state attorney the sentence is excessive. The applicants were charge under section 45 (1) (i) of the Immigration Act [CAP. 54 R.E. 2016] which state that- "Any person who unlawfully enters or is unlawfully present within Tanzania in contravention o f the provisions o f this Act: shall be guilty o f an offence" The punishment is provided under subsection (2) of section 45 of the Immigration Act [CAP. 54 R.E. 2016] which stated that- "Any person who commits an offence under this Act, shall except where any other penalty is specifically provided therefore, be liable on conviction to fine not less than five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment" It is settled that according to Garner, B.A Black's Law Dictionary (1999, 7th Ed.) p. 1367 a sentence is as a punishment or sanction imposed on a criminal wrong doer for disobeying the law. The Tanzania Sentencing Guidelines, 2023 make it clear that the court should take into consideration the mitigating and the aggravating factors in sentencing but also the first offenders should be sentenced leniently. 3 |Page The applicants are not only first offenders but also pleaded guilty. They were entitled to a lenient sentenced leniently. I had a cursory review of the proceedings of the trial court where the trial magistrate stated that he considered aggravating and mitigating factors before imposing the sentence. He did not consider the fact that the applicants were first offender who pleaded guilty. The only fact he took in his mind was to impose a deterrent sentence. He arrived at a wrong sentence. Failure to consider the applicants' plea of guilty and the fact that they were first offender lead to an excessive sentence. Had the trial magistrate considered that by pleading guilty, the applicants saved the court's time and costs together with the fact that as they were first offenders, he would not have imposed such a sentence. It was held in Tabu Fikwa vs. Republic [1988] TRL 48 that- "wherever a first offender is concerned the emphasis should always be on the reformative aspect o f punishment unless the offence is one o f such a serious nature that an exemplary punishment is requiredor unless the offence is so widespread that severe punishment is needed as a shock deterrent." I, therefore, find that the trial magistrate had no reason and he did not give reason for imposing a sentence above the minimal sentence 4 |P a g e fine of five hundred thousand and impose 18 years' custodial sentence in default. Thus, the sentence was excessive, for that reason, not justifiable or appropriate in the circumstance and facts of this case. In the end, I find that find that the sentence imposed was excessive, I set it aside and substitute it with a fine sentence of five hundred thousand in default to serve 6 months in imprisonment C/S 45(l)(i) and 2 of the Immigration Act, [Cap. 54 R.E. 2016]. I order accordingly. Judge Court: Ruling delivered in the presence Ms. Blandina Msao the State Attorney for the Republic, 2nd, 3rd, 5th, 8th, 9th, 10th, 12th 13th, 15th, 16th 17th 18th 19th and 20th applicants, and the absence of the rest. John R. Kahyoza. Judge 5/7/2024 5 |P ag e

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/314149/source_file/7e05fe87a8ae6d55/samweli_cr.revision.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/samweli-achiso-erbalo-v-the-republic-sentencing-tanzlii-2023--6a3ea5243b1caa9129819872

Prepared on 13 October 2026 · Esheria