

## LEGAL PRINCIPAL DISCUSSED

Citation	Parties	Legal Principles Discussed
<p>IN THE COURT OF APPEAL OF TANZANIA AT MWANZA.</p> <p>CRIMINAL APPEAL NO. 135 OF 2007.</p> <p>KIMARO J.A ,LUANDA J.A AND MANDIA J.A.</p>	<p><b>WAIMAN JULIUS VS. THE REPUBLIC.</b></p> <p>(Appeal from the Decision of the High Court of Tanzania at Biharamulo,Sambo J)</p>	<p>1. It is a trite law that a higher Court can not alter a sentence imposed by the lower court in the mere ground that if it was sitting as a trial court it would have imposed a different sentence. For the higher court to interfere with the sentence imposed by the lower court there should be good grounds to do so.</p>





Briefly the background information giving rise to this appeal is this: Initially, the appellant was charged with murder. It was alleged that the appellant murdered one Taabu s/o Daniel. The appellant denied the charge and a preliminary hearing was conducted.

At a later date when the case came for hearing, the appellant's offer to plead to a lesser offence to murder was accepted. The charge was accordingly substituted and explained to the appellant. The appellant readily pleaded guilty to the charge of manslaughter. Facts were adduced whereby the appellant agreed; he was convicted. Before he was sentenced, in mitigation the appellant through his defence counsel one Mr. Kabunga learned advocate informed the Court thus, we reproduce:

Mr. Kabunga:-

*My Lord, the accused is a first offender. He has pleaded guilty to the offence, which shows that he has repented and feels sorry. He has not troubled the Court. He has been in Prison cells for six years waiting for the trial of his case. At the time when he*

*committed this offence, it seems he was of the age not more than 18. The accused and deceased had no grudges. The trouble started after drinking pombe. The fight caused the accused to draw a knife and knifed his friend in defence. He did so only once. Facts shows that the deceased contributed to his death due to pombe. As the accused has repented and feels sorry, we pray that the Court do mercy on the accused person. That's all.*

In imposing the aforesaid sentence, the High Court observed, we quote:

**"SENTENCE**

*The accused is a first offender. He committed the offence while fighting the deceased and all were at a pombe club. However the life of an innocent person came to an end. He used a weapon and*

*though he knifed him only once the force was great to the extent of causing death. I therefore sentence the accused to fifteen(15) years of jail (sic) imprisonment as from today.*

**K.M.M. Sambo**

**JUDGE**

**7/5/2007**

In his memorandum of appeal which was adapted by Mr. Constantine Mutalemwa his counsel, the appellant basically raised two grounds which is to the following effect. One, the Court did not take into consideration the six years he spent in prison. Two, the Court did not also take into consideration that the appellant readily pleaded guilty to the offence.

Elaborating, Mr. Mutalemwa said the sentencing process is the Court discretion. Normally the higher Court, save in very few cases, will not lightly interfere with the discretion of the sentencing Court. He went on to say discretion should be exercised judiciously based on judicial principles. He informed the Court that he knows the offence of manslaughter carries a

maximum sentence of life imprisonment. In this, he said, the High Court did not take into account the above mentioned mitigating factors. He referred us to the decision of this Court in **Mussa Ally Yusufu V. R. Crumial** Appeal No. 72 of 2006; **Silvanus Leonard Nguruwe VR** (1981) TLR 66; **Katinda Simbila@Ng'waninana VR** Criminal Appeal No 15 of 2008. He prayed for interference of the sentence.

Mr. Edgar Luoga learned Senior State Attorney basically said the High Court appeared to have not taken the two factors into consideration.

It is trite law that a higher Court cannot alter a sentence imposed by the lower Court on the mere ground that if it was sitting as a trial Court it would have imposed a different sentence. For the higher Court to interfere with the sentence imposed by the lower Court, there should be good grounds to do so. (see **Silvanus Leonard Nguruwe VR** (1981) TLR 66)

However, we wish to point out that one of the most difficult area in the administration of justice is the sentencing process especially where the law has not fixed the minimum sentence. In such area the sentencing Court should not only look at the harm the offender has caused to the

society but should also take into account all mitigating factors of the offender and apply its wisdom and common sense to arrive at a just sentence. That in turn would have seen the sentencing court to have exercised its discretion Judiciously.

In our case, the record is very clear that the period of six years the appellant spent in prison awaiting for his trial and that he readily pleaded guilty appeared to have not been considered. Those are material factors which the sentencing Court ought to consider before it imposes a sentence. Since the above factors were not considered, we think we are entitled to interfere with the sentence of fifteen years imprisonment imposed by the High Court. With due respect we agree with Mr. Mutalemwa.

There is no doubt that the act of the appellant to enter a plea of guilty saved Court's time and expenses of calling witnesses.

Taking these two factors also into consideration we are of the considered view that the sentence imposed by the High Court is in the high side. We set it aside. In its stead we impose the sentence of (9) nine years imprisonment.



The appeal is allowed to that extent. Order accordingly.

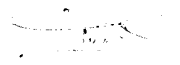
DATED at MWANZA this 4<sup>th</sup> day of October, 2010.

**N. P. KIMARO**  
**JUSTICE OF APPEAL**

**B. M. LUANDA**  
**JUSTICE OF APPEAL**

**W. S. MANDIA**  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.

  
W. P. Bampikya  
**SENIOR DEPUTY REGISTRAR**

