Citation	Parties	Legal Principles Discussed
CRIMINAL APPEAL NO. 61 OF 2007 – COURT OF APPEAL OF TANZANIA AT MBEYA. Coram: LUBUVA J.A, NSEKELA J. A AND MBAROUK J.A	**OMARI ATHUMANI MKUMBILA VS REPUBLIC** (Appeal from the sentence of the High Court of Tanzania at Songea – **Criminal Sessions case No.14 of 2006**) Uzia J.	The Court can interfere with the sentence only when the sentence imposed is manifestly excessive, or that there has been an error in principle. In Yohana Balicheko VR[1999] TLR 5, tabu Fikwa Vs Republic [1988] TLR 46 and Francis Titus Mwacha Vs Republic [1990] TLR 88

IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

(CORAM: LUBUVA, J.A., NSEKELA, J.A., And MBAROUK, J.A.)

CRIMINAL APPEAL NO. 61 OF 2007

OMARI ATHUMANI MKUMBILA ..... APPELLANT
VERSUS
THE REPUBLIC ..... RESPONDENT

(Appeal from the sentence of the High Court of Tanzania at Songea)

(Uzia, J.)

dated the 23rd day of February, 2007
in
Criminal Sessions Case No. 14 of 2006

JUDGMENT OF THE COURT

16 August & 12 September 2007

MBAROUK, J.A.:

This is an appeal against sentence. The High Court (Uzia, J.) sitting at Songea convicted the appellant of the offence of manslaughter contrary to section 195 of the Penal Code. The appellant was sentenced to fifteen (15) years imprisonment. Aggrieved with sentence, to this appeal has been preferred.

At the hearing of the appeal, Mr. Mbise, learned counsel, appeared for the appellant, while Mr. Malata, learned State Attorney, appeared for the respondent Republic.

Mr. Mbise, filed the following one ground of appeal:-

1. The sentence of 15 years imprisonment imposed on the appellant is manifestly excessive in the circumstances of the case before the High Court.

It was Mr. Mbise's submission that the sentence imposed was manifestly excessive. He submitted that the trial High Court Judge when sentencing the appellant does not seem to have taken into consideration all the relevant factors such as the period which the appellant has been in remand custody which in this case was nineteen (19) months; the cause of death and the fact that the postmortem report showed that there was no serious wound.

Basically, Mr. Mbise's appeal is pegged on the ground that the sentence was manifestly excessive. However, he conceded that this Court does not interfere with the sentence imposed by the trial High Court unless it is shown that the sentence is manifestly excessive or that the sentencing court failed to consider material circumstances or there was an error in principle. In those circumstances he urged this Court to allow this appeal and reduce the sentence.

Mr. Malata, learned State Attorney, who appeared for the respondent Republic, resisted the appeal. He contended that, this Court can interfere with the sentence only when the sentence imposed is manifestly excessive, or that there has been an error in principle, or that the trial High Court has failed to consider material circumstances. He said none of those factors was available in this case. He urged the Court to dismiss the appeal.

The main issue for consideration in this appeal is whether there are grounds for this Court to interfere with the sentence imposed by the trial High Court as urged by Mr. Mbise.

In numerous cases, this Court has reiterated the principle involved when the court can interfere with the sentence imposed by the trial High Court. For instance, in **Yohana Balicheko v. R.** [1999] TLR 5 the Court *inter alia* held:-

> "As a general rule this court will not readily interfere with a sentence imposed by a High Court unless satisfied that the sentence was manifestly excessive, or that the sentencing court failed to consider a material circumstance, or that if otherwise erred in principle."

In the instant case, as correctly submitted by Mr. Mbise, learned counsel, it is not certain whether the learned trial judge duly considered all the circumstances which were advanced in mitigation. From the record, the learned judge dealt with the matter in a matter of a single line. It is stated:-

> "I have considered the circumstances of the case and the submission from the defence counsel. I sentence the accused person to fifteen (15) years imprisonment."

With respect, we think the learned judge appears to have dealt with the matter in a rather casual manner. As it is, it is not clear whether all the circumstances advanced before the court were considered. In this light, Mr. Mbise's complaint merits consideration.

We agree with Mr. Malata, learned State Attorney that the punishment prescribed for the offence of manslaughter is life imprisonment. However, taking into account more closely the mitigating circumstances such as the fact that the appellant is a first offender, we are of the considered opinion that this is a fit case in which a lesser sentence could be imposed. In **Tabu Fikwa v. Republic** [1988] TLR 46 and **Francis Titus Mwacha v. Republic** [1990] TLR 88, the fact that the appellants were first offenders was considered. At the same time we have considered the fact that the appellant is a father of two children and that the incident happened between husband and wife.

In the circumstances, we are of the considered opinion that had the learned judge duly taken into consideration all the factors advanced in mitigation, he would have come to the conclusion that a lesser sentence was called for in this case. Consequently, as we are increasingly of the view that the sentence imposed was manifestly excessive in the circumstances of the case, the Court is constrained to interfere.

For the foregoing reasons, we set aside the sentence of fifteen (15) years imprisonment and in substitution thereof, the appellant is sentenced to a term of seven (7) years imprisonment.

To this extent, the appeal is allowed.

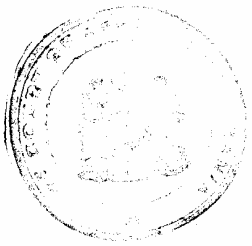
DATED at MBEYA this 24th day of August, 2007.

D.Z. LUBUVA
JUSTICE OF APPEAL

H.R. NSEKELA
JUSTICE OF APPEAL

M.S. MBAROUK
JUSTICE OF APPEAL

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



(S.M. RUMANYIKA)
DEPUTY REGISTRAR