Citation	Parties	Legal Principles Discussed
CRIMINAL APPEAL NO. 72 OF 2006 – COURT OF APPEAL OF TANZANIA AT DODOMA Coram: LUBUVA, J.A, MROSO, J. A AND NSEKELA J. A	**MUSA ALLY YUSUFU VS. THE REPUBLIC** – (Appeal from the sentence of the High court of Tanzania at Dodoma) - **Criminal Sessions case No.20 of 2001** Kaijage J.	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 that, one of the main objects of punishment is the reformation of the offender. (Francis Chilewa VR [1968] HCD.510, Bernadeta Paul VR [1992] TLR 97, Mohamed Ratibu @ Said Vs The republic (Criminal Appeal No 11 of 2004)(Unreported)

IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

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

CRIMINAL APPEAL NO. 72 OF 2006

MUSSA ALLY YUSUFU .... APPELLANT
VERSUS
THE REPUBLIC .... RESPONDENT

(Appeal from the Sentence of the High Court of Tanzania at Dodoma)

(Kaijage, J.)

dated the 24th day of June, 2001
in
Criminal Sessions Case No. 20 of 2001

25 & 29 May 2006

JUDGMENT OF THE COURT

MROSO, J.A.:

The appellant has come to this Court on a single ground of appeal that a sentence of twenty years imprisonment for manslaughter imposed on him by the High Court at Dodoma was excessive in the circumstances of the case. Brief facts of his case before the High Court will help to show the background from which the High Court, Kaijage, J., assessed the sentence he gave to the appellant.

On 15th November, 1998 the appellant attended a wedding party at Kwadinu Village in Kondoa District. As he danced with the wife of his younger brother one Shabani s/o Amir passed between him and his dancing partner. The appellant was apparently annoyed by that conduct and confronted the said Shabani to protest and in the process assaulted the latter. He also assaulted a young man who had tried to intervene. It was then the deceased who was also a ten-cell-leader tried to arrest him. The appellant stabbed him in the back, causing his death. Four days later he was arrested and subsequently charged with murder.

About three and a half years later the appellant appeared before the High Court where he pleaded guilty to the lesser offence of manslaughter. He was duly convicted on his own plea of guilty of manslaughter and sentenced to a term of twenty years imprisonment after his then advocate, Mr. Ruhumbika, had pleaded on his behalf mitigating circumstances. Those circumstances were that he was a young man (aged 25 years at the time he committed the offence) and was married with one child. He used a knife he had to stab once

the deceased who he thought was intending to assault him. Mr. Ruhumbika asked the High Court to either discharge the appellant conditionally under section 38 of the Penal Code or under section 326 of the Criminal Procedure Act, 1985. We hasten to point out that section 326 of the Criminal Procedure Act, 1985 was clearly inapplicable because the High Court had already convicted the appellant whereas under section 326 (1) the court would order the discharge of an accused person "without proceeding to convict" him.

Be it as it may, the Judge decided to pass sentence on the appellant and in doing so he said he had taken into account that the appellant was a youthful first offender. He also took into account the mitigating factors which were pleaded by the advocate for the appellant. On the other side of the case, the judge also considered the fact that the appellant had attended the wedding party taking with him a lethal weapon and had employed excessive and unwarranted force in the circumstances then obtaining when he caused the death of the deceased. Since the offence the appellant committed carried a sentence of life imprisonment the judge

considered that a sentence of 20 years imprisonment was appropriate.

Before us Mr. Nyabiri, learned advocate who now appears for the appellant, has argued that although the High Court Judge said he had taken into consideration that the appellant was a first offender, that aspect is not reflected in the sentence which was meted out to the appellant. He submitted that a cardinal consideration when sentencing a young first offender is to reform him. An offender like the appellant when sentenced to such a lengthy period in prison would be spending the better part of his whole life under incarceration, rendering the idea of reformation meaningless. It was in that sense that the sentence which the High Court imposed on the appellant could be considered to be manifestly excessive, he argued. He cited decisions of this Court in which sentences imposed by the High Court were interfered with because important mitigating factors were either not considered at all or were inadequately considered by the High Court. Such cases were **Bernadeta Paul v. Republic** [1992] TLR 97 and **Mohamed Ratibu @ Said v. The Republic,**

Criminal Appeal No. 11 of 2004 (unreported). He asked this Court to reduce the sentence appropriately.

Ms. Mwanda, learned State Attorney for the respondent Republic, on the other hand supported the sentence which was meted to the appellant. She argued that the High Court had duly taken into consideration relevant mitigating circumstances relating to the appellant and that if it is appreciated that the offence of manslaughter carries with it a sentence of life imprisonment, then 20 years cannot be said to be manifestly excessive in the circumstances that the appellant committed the offence. She reminded the Court also that an appellate court does not lightly interfere with a sentence assessed by a trial court unless such a sentence is illegal or is wrong in principle or the sentencing magistrate or judge fell into material error of fact or law. She cited a decision of this Court in **Andrew Colman Shayo v. Republic,** Criminal Appeal No. 114 of 2003, unreported, in support of those principles. She asked the Court to sustain the sentence which was imposed by the High Court.

We are fully aware of the guiding principle that an appellate court, including this Court, must not interfere with a sentence which has been assessed by a trial court unless such sentence is illegal or the sentencing court followed a wrong principle or failed to take into account important mitigating factors such as that the convicted person is a first offender, the period he spent in custody before being convicted and sentenced, his age, health and any other meritorious extenuating circumstances like the fact that the convicted person readily pleaded guilty to the offence and thereby demonstrating remorse. A sentence which is manifestly excessive or patently inadequate may be altered on appeal.

We, like the High Court Judge, appreciate that the appellant had obviously overreacted to a situation which could have ended in far less tragic consequences. We observe that the learned judge stated that he took into consideration the fact that the appellant was youthful and a first offender. He also considered the mitigating factors which were pleaded by appellant's advocate. However, he did not make it clear that he also took into account in appellant's

favour that he had pleaded guilty to the offence of manslaughter of which he was convicted. That was a very significant mitigating circumstance which suggested remorse.

In **Bernadeta Paul v. Republic** which Mr. Nyabiri cited to us the High Court apparently did not consider that the appellant in that case had pleaded guilty to an offence of infanticide. This Court when considering that aspect in an appeal against sentence said –

> It is our considered view that had the learned judge taken into account appellant's plea of guilty to the offence ---- she (the judge) would no doubt have found that the appellant was entitled to much more lenient sentence than the sentence of 4 years she imposed.

Taking that factor, among others, into consideration this Court allowed the appeal and set aside the 4 year prison sentence which had been imposed by the High Court on that appellant.

In **Francis Chilewa v. R** [1968] H.C.D. 510 which was cited by this Court in **Bernadeta Paul,** the appellant in that case had pleaded guilty to the offence with which he was charged. The appellate court in that case said:-

> 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 wider sentence that (sic) in (sic) otherwise have done.

In the present appeal, considering that the appellant had pleaded guilty to the charge and was still relatively young and needed time to reform and be a better member of society, the sentence of 20 years imprisonment was manifestly excessive, even after taking into

account his unduly violent conduct at the time he committed the offence.

In the **Mohamed Ratibu @ Said** case cited above, the appellant in that case had been sentenced by the High Court to a term of 20 years imprisonment after he pleaded guilty to manslaughter. He appealed to this Court complaining that the sentence was excessive. The High Court judge appeared to have taken into consideration aggravating circumstances only but not extenuating factors such as that the appellant had pleaded guilty to the charge. We said in that appeal:-

> ... although ... the appellant acted with undue violence during the fight with his brother-in-law, the trial court should also have given due consideration to the facts that he was a first offender, had readily pleaded guilty to the charge and had already spent over four years in custody. Those were legitimate mitigating circumstances and we believe that had the High Court taken those factors into

> consideration ... it would not have imposed
> what is plainly an excessive sentence.

This Court reduced the sentence to one of eight years imprisonment.

For the reasons which we have attempted to give above, we allow the appeal by setting aside the sentence of 20 years imprisonment and substitute in its place a sentence of ten years imprisonment, which we think meets the justice of the case. It is so ordered.

DATED at DODOMA this 29th day of May, 2006.

D.Z. LUBUVA
JUSTICE OF APPEAL

J.S. MROSO
JUSTICE OF APPEAL

H.R. NSEKELA
JUSTICE OF APPEAL

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

(S.M. RUMANYIKA)
DEPUTY REGISTRAR