Citation	Parties	Legal Principles Discussed
CRIMINAL APPEAL NO. 257 OF 2006- COURT OF APPEAL OF TANZANI AT DODOMA- MUNUO, J.A, KAJI, J, A, KIMARO, J, A.	**JOHN MBUA Vs. THE REPUBLIC** (Appeals from the conviction of the High Court of Tanzania at Singida- Criminal Case No. 20 of 2006-F. S. K. MUTUNGI. PRM. EXT. J.)	An accused pleading guilty to an offence with which he is charged, qualifies him for the exercise of mercy from the court. The reason being that one of the main objects of punishment is the reformation of the offender as was held in the case of **Francis Chilema V R (1968) HCD No. 510** which was adopted by this Court in the case of **Bernadeta Paul V R (1992) TLR 97.**

IN THE COURT OF APPEAL OF TANZANI
AT DODOMA

CORAM: MUNUO, J.A, KAJI, J, A, KIMARO, J, A.

CRIMINAL APPEAL NO. 257 OF 2006

JOHN MBUA..... APPELLANT

VERSUS

THE REPUBLIC .....RESPONDENT

(Appeals from the conviction of the High Court of Tanzania at Singida)

(F. S. K. MUTUNGI. PRM. EXT. J.)

Dated the 3rd day of October, 2006

In
Criminal Case No. 20 of 2006

JUDGMENT OF THE COURT

18 & 22June, 2007

KAJI, J, A.:

In this appeal, the appellant, John Mbua, is appealing against the sentence of life imprisonment meted out on him upon conviction of the offence of manslanghter, contrary to sections 195 and 198 of the Penal Code Cap. 16 [Cap. 16 R. E. 2002]

The appellant and the deceased Anisiata d/o Paschal were husband and wife. On 5th October, 2004 when the appellant returned home he found the deceased vomiting. On asking her as to why it was so she said she had drunk some alcohol. This annoyed the appellant who beat her until she lost consciousness. The appellant took her to Singida Hospital for treatment. But upon arrival she was pronounced dead. A post mortem examination was performed whereby the cause of death was found to have been due to

asphyixia. The appellant was arrested and charged with manslaughter.

At his trial the appellant readily pleaded guilty to the offence and was convicted and sentenced to life imprisonment. Aggrieved by the sentence the appellant lodged this appeal through the legal services of Mr. D. J. Nyabiri, learned counsel, who preferred one ground of appeal, namely, that the sentence imposed was manifestly excessive.

Submitting on this point the learned counsel observed that, the appellant was a first offender. He had readily pleaded guilty to the offence. He had been in custody from 5. 10. 2004 when he was arrested until on 3/ 10/ 2006 when he was sentenced. The learned counsel submitted further that the deceased was his (appellant's) wife and that after the death of his wife the responsibility to take care of their three children rested on him. The learned counsel pointed out that, the purpose of sentence where the accused has pleaded guilty should be reformative rather than punitive. He referred us to the cases of **Bernadeta Paul V R (1992) TLR 97,**

and Mohamed Ratibu @ Said V R – Criminal, Appeal No. 11 of 2004 (unreported).

The learned counsel remarked that, in sentencing the appellant, the learned Principal Resident Magistrate with Extended Jurisdiction remarked as if the appellant was an animal or a hard core criminal. The learned counsel pointed out the relevant passages and the offending words.

On his part, Mr. A. D. Mwampoma, learned Principal State Attorney, who represented the respondent Republic, did not support the sentence on similar grounds stated by the appellant's counsel. Mr. Mwampoma further pointed out that, the learned trial Principal Resident Magistrate did not observe the well-known principles for assessment of sentence, and that the learned Principal Resident Magistrate was moved by his own sentiments. The learned Principal State Attorney observed that, the learned trial Principal Resident Magistrate's remarks were not supported by the record, and that he ignored to consider some important matters which ought to have been considered, such as the fact that the appellant was a first

offender who had readily pleaded guilty thereby saving both the prosecution and the court's work and time.

It has been emphasized by this Court in numerous cases that, an appellate Court should not interfere with the discretion exercised by a trial judge or magistrate as to sentence except in such cases where it appears that in assessing sentence the judge or magistrate has acted upon some wrong principle, or has imposed a sentence which is either patently inadequate or manifestly excessive. See for instance the cases of **Bernadeta Paul V R (1992) TLR 97, Rashid S. Kaniki V R (1993) TLR 258, Yohana Balicheko V R (1994) TLR 5, and Mohamed Ratibu @ Said – Criminal Appeal No. 11 of 2004** (unreported), just to mention a few.

It is also 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 being that one of the main objects of punishment is the reformation of the offender as was held in the case of **Francis Chilema V R**

(1968) HCD No. 510 which was adopted by this Court in the case **of Bernadeta** cited *Supra.*

In the instant case, it is common ground that the appellant is a first offender, and that he pleaded guilty to the charge. He had been in custody for 2 years. The deceased was his wife. From the record there is nothing suggesting that the appellant used a lethal or dangerous weapon. After the death of his wife he remained the sole parent of their children.

From the record it would appear the learned trial Principal Resident Magistrate with Extended Jurisdiction considered some of these factors when he said:-

> "upon having carefully gone through the facts of the case, and in considering the mitigating factors advanced by the defence counsel on behalf of the accused, …"

If the learned Principal Resident Magistrate really considered those facts as his words would suggest, we fail to understand why he failed

to give them the due weight they deserved. Actually he ignored them and took the view that the appellant did not deserve any leniency because he was of unspeakable erratic character who mishandled the deceased unwarrantedly and indiscriminately, and who may even turn out to be an irresponsible and irrational father, not being capable of taking good care of his children.

With great respect to the learned Principal Resident Magistrate, we think, he was wrong in ignoring to consider those factors properly and giving them the weight they deserved as demonstrated in the cases cited *Supra*, and instead decided to rely on speculation. As observed earlier on, the appellant was a first offender who had readily pleaded guilty to the offence with which he was charged. He had been in custody for 2 years. We are of the firm view that, had the learned Principal Resident Magistrate properly considered these facts, he would no doubt have found that the appellant was entitled to a much more lenient sentence than the sentence of life imprisonment imposed which in our view was manifestly excessive.

As pointed out earlier on, the learned Principal State Attorney did not support the sentence, and in our view, rightly so.

According to the appellant's mitigating factors as demonstrated above, together with the overall circumstances surrounding this case, we think, a sentence of ten (10) years imprisonment would meet the justice of the case.

In the event, and for the reasons stated *supra*, we set aside the sentence of life imprisonment and substitute with a sentence of ten (10) years imprisonment. We allow the appeal to that extent.

DATED at DODOMA this 22nd day of June, 2007.

E. N. MUNUO
JUSTICE OF APPEAL

S. N. KAJI
JUSTICE OF APPEAL

N. P. KIMARO
JUSTICE OF APPEAL

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

(S.M. RUMANYIKA)
DEPUTY REGISTRAR