

**IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA**

(CORAM: KILEO, J.A., BWANA, J.A., And MJASIRI, J.A.)

CRIMINAL APPEAL NO. 68 OF 2007

ROBERT ARON APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the decision of the High Court
of Tanzania at Mbeya)**

(Mrema,J.)

dated the 9th day of March, 2004

in

Criminal Sessions Case No. 73 of 2003

JUDGMENT OF THE COURT

7 & 9 September 2009

BWANA, J.A.:

Initially the appellant was charged with murder. The offence was, however reduced to Manslaughter contrary to Section 195 of the Penal Code. He pleaded guilty to this lesser offence. He was sentenced to a prison term of twenty years. He now appeals against that sentence, raising two grounds in his Memorandum of Appeal namely –

1. That the sentence of 20 years in prison is manifestly excessive in the circumstances of this case.
2. That the learned trial judge erred in law and fact in not considering the mitigating factors which were in favour of the accused.

In his submission in support of the appeal, Mr. Victor Mkumbe, learned counsel for the appellant, is of the view that the trial judge took into consideration only the views expressed by the prosecution side, ignoring the mitigating factors that had been raised by the appellant. The appellant had found his wife in flagrant delicto with another man. In a heat of passion he stabbed her in the neck region, thus leading to her death as described in the Post-Mortem Report. It is Mr. Mkumbe's further submission that the trial judge failed to consider the mitigating factors by not for example, considering the facts that the deceased contributed to her own death by committing adultery; that the appellant was a first offender; that he had been in remand prison for a considerable long period; and

that he had three children to look after. Mr. Mkumbe was of the further views that in meting out such severe sentence, the trial judge allowed himself to be influenced by matters that were purely speculative. Matters such as confessing that the appellant had never committed adultery or that he was morally clean were never raised during the hearing of the case.

Mr. Ayub Mwenda, learned State Attorney, did not oppose the appeal ostensibly on the same arguments as raised by counsel for the appellant. Both counsel urged this Court to take into consideration principles of sentencing as applicable in our jurisdiction.

The facts of this case as discerned from the record may be stated briefly as hereunder.

The appellant and one Beatha Aporinali were husband and wife. On 23 August, 2001 at Ifupa Village within Mbeya District, the appellant came home at around 8.00 p.m. but his wife – the deceased – was not there. He went in search of her and eventually

Kijangwa vs Republic – Criminal Appeal No. 208 of 2005; and
John Mbua vs Republic, Criminal Appeal No. 257 of 2006
(unreported).

Courts of law are mindful of the well settled principles on sentencing. Several factors have to be taken into consideration. These include (but not limited to) the following.

First, and foremost, is the seriousness of the offence. Seriousness may be seen from the gravity of the offence as well as/or the extent of injury suffered by the victim. The former connotes societal revulsion to the kind of offence committed. The latter, is indicative of the physical, mental or psychological sufferings on the part of the victim. In the latter situation, it is desirable that a trial court conducts a kind of “victim impact assessment” before imposing a desired sentence.

Second, the court must, as well, take into consideration the factors leading to the commission of the offence. In the instant case,

for example, the trial court ought to have taken into consideration whether the appellant's act of killing his wife by severing her neck, upon finding her in flagrant delicto with another man was excusable. The trial court, having taken into consideration the foregoing needed to tell society – by way of sentence – that treating one's spouse in the way the appellant did, was either acceptable or unacceptable to any civilized society. If the latter is the case, then the accused should be accountable for that unbecoming action by suffering a sentence commensurate with the offence committed.

The foregoing considered, can it then be said that the trial court herein erred in imposing a twenty years prison term? Having considered all the factors surrounding this case, such as the appellant finding his wife in flagrant delicto; severing off her neck; the trial judge being influenced by speculation – and the like, we are nevertheless satisfied that the sentence imposed was commensurate with the offence.

It is well settled that an appellate court should not alter a sentence imposed by a trial court on the mere ground that if it were sitting as a trial court it would have imposed a different sentence. In the case of **Dingwal vs Republic** (1966) Seychelles Law Reports, 205, it was stated:

..."an appeal court will only alter a sentence imposed by a trial court if it is evident that the said trial court has acted on a wrong principle, or overlooked some material factor; or if the sentence so imposed is manifestly excessive in view of the circumstances of the case ... an appeal court is not empowered to alter a sentence on the mere ground that if it had been trying the case, it might have passed a somewhat different sentence ..."

In the instant appeal, we have taken into consideration the brutal nature with which the victim met her death at the hands of her husband, the appellant. Likewise, his mitigating factors presented before the trial court considered, do not convince us to alter the

sentence imposed by the trial court. The offence with which the appellant was convicted and sentenced to twenty years imprisonment, carries a maximum life prison term. We do not consider the sentence of twenty years, to be either harsh or excessive in the circumstances.

Therefore this appeal against sentence is dismissed.

DATED at MBEYA this 8th day of September, 2009.

E. A. KILEO
JUSTICE OF APPEAL

S. J. BWANA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

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

J. S. MGETTA
DEPUTY REGISTRAR