

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CORAM: MAKAME, J.A.; KISANGA, J.A. And OJAR, J.A.

CRIMINAL APPEAL NO. 91 OF 1986

NO. B. 8141 D/CPL. EVEREST HONORY. APPELLANT

VERSUS

THE REPUBLIC. RESPONDENT

(Appeal from the sentence of the High Court
of Tanzania at Dodoma) (Ruhumbika, J.) dated
the 14th day of November, 1986

in

Criminal Sessions Case No. 13 of 1985

JUDGMENT OF THE COURT

MAKAME, J.A.:

This is an appeal against sentence only. The appellant is being advocated for by Miss Mjasiri while on behalf of the Respondent Republic Mr. Nassaba, learned Principal State Attorney, resisted the appeal.

The appellant used to be a Police detective corporal and at the material time he was stationed at Kongwa. Both he and the deceased were not sober at a reception being held at a place called Central Bar and to which none of them had been invited. At a certain juncture the appellant was allowed to stay on, while the deceased was not. The deceased made a nuisance of himself generally, and tried to prevent the appellant from re-entering the place after the appellant had gone out for a while. The appellant roughed up the deceased and, at the trial, he agreed that he had karated the deceased although in a Memorandum to us, which Miss Mjasiri did not adopt, he tried to back out and say "Nilimpiga Ngwala" only. The deceased died of brain haemorrhage because of a fractured skull.

...../2.

Following his own plea of Guilty and the consequent conviction, the appellant got a sentence of fifteen years imprisonment meted out by the High Court (Ruhumbika, J.).

Miss Mjasiri complained that the sentence was excessive in the circumstances, taking into account the mitigating factors the High Court was furnished with, and the fact that the deceased was, as it were, the architect of his own death.

Mr. Massaba submitted that the sentence was at most only excessive, but not manifestly excessive. The appellant ought to have known that as a Police Officer his duty was to maintain peace. He should have not reacted so out of proportion as to karate the deceased.

Sentencing is generally a difficult exercise. This Court is usually slow to interfere with sentences imposed by the courts below. In the present appeal, having carefully reviewed the circumstances disclosed, and taken into account what has been submitted before us, we have great sympathy with Miss Mjasiri's complaint. We are of the view that a sentence of six years imprisonment for the appellant, who was in remand custody for almost two and half years before being sentenced, would meet the justice of the case. We accordingly allow this appeal to the extent of setting aside the sentence of 15 years, and impose in its place a sentence of six years.

We wish also to mention the importance of keeping close to the evidence on record and not importing matters not in evidence.

...../3.

In sentencing the appellant, the learned judge observed that the deceased was working at Kongwa Government Hospital. We do not see this anywhere on the record so we naturally wonder where from the learned judge got the information.

DATED at DAR ES SALAAM this 28th day of May, 1987.

L. M. MAKAME
JUSTICE OF APPEAL

R. H. KISANGA
JUSTICE OF APPEAL

A. M. A. OMAR
JUSTICE OF APPEAL

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

(J. H. MSOFFE)
DEPUTY REGISTRAR.