

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

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

CRIMINAL APPEAL NO. 48 OF 1984

Between

IDIRISA IBRAHIM. APPELLANT

And

THE REPUBLIC. RESPONDENT
(Appeal from the conviction of the High Court
of Tanzania at Tanga) (H.E.D. Sisya, J.) dated
the 2nd day of February, 1984

in

Criminal Sessions Case No. 15 of 1983

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

The appellant pleaded guilty to manslaughter and was duly convicted on his own plea and sentenced to 10 years imprisonment. He was apparently arrested on 19.12.82 and was kept in custody and he was sentenced on 2.2.84.

On the evening in question the appellant was celebrating the birth of a child to his wife in a pombe club. He told his sister to purchase two bottles of pombe for the celebration. The deceased, who was the appellant's brother, also turned up, and seized the two bottles of pombe. The deceased took exception to the appellant for not informing him of the happy event. A quarrel ensued and there was a fist fight between the appellant and the deceased. By that time both of them were drunk. The appellant was injured on the mouth. The appellant rushed into the club house, seized a piece of wood and struck the deceased on the head, fracturing the parietal area, damaging the brain. The deceased died the following day of brain damage and bleeding.

The appellant was the victim of an attack, and the deceased was clearly the aggressor. In the course of the fight the appellant suffered a mouth injury. They were in or just outside

a pombe club, and both were rather drunk. The appellant rushed in and picked up a piece of wood, and struck the deceased. The deceased was struck on the head in the parietal area, and his brain was damaged. The appellant must have struck still in the heat of passion and in the course of a fight. We have no evidence as to the size and weight of the piece of wood. The appellant is a first offender and had pleaded guilty and had been in custody for about 15 months before being convicted and sentenced.

In our view the sentence of 10 years imprisonment in the circumstances is clearly manifestly excessive. We reduce the sentence to 5 years imprisonment.

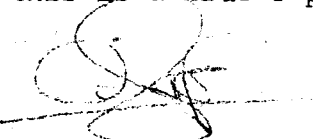
DATED at DAR ES SALAAM this 2nd day of October, 1985.

A. MUSTAFA
JUSTICE OF APPEAL

L. M. MAKAME
JUSTICE OF APPEAL

R. H. KISANGA
JUSTICE OF APPEAL

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


(B. P. MOSHI)
SENIOR DEPUTY REGISTRAR.