IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

(CORAM: KILEO, J.A., JUMA, J.A., And MWARIJA, J.A.)

CRIMINAL APPEAL NO. 336 OF 2015

BASIL RAMADHANI.....APPELLANT
VERSUS
THE REPUBLIC..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania At Arusha)

(Maghimbi, J.)

Dated 5th day of February, 2015
in
(HC) Criminal Session No. 14 of 2014

JUDGMENT OF THE COURT

Date 5th & 8th October, 2015.

KILEO, J.A.:

The appellant was convicted of manslaughter contrary to section 195 of the Penal Code on his own plea of guilty to the charge. He was sentenced to 20 years imprisonment. Having passed the sentence the learned trial judge ordered that the time that the appellant had spent in remand custody was to be deducted from the 20 years that was imposed. She stated thus:

"....As such I sentence the accused person BASIL RAMADHANI to serve a period of twenty (20) years imprisonment. However, the time

that the accused was in custody for the charge of murder shall be deducted from his sentence; hence the accused shall serve imprisonment for the remaining period."

According to the brief facts that were adduced before the trial court there was a fight between the deceased and the appellant after the deceased had demanded for his panga from the appellant. In the course of the fight the deceased sustained a stab wound at the hands of the appellant. The stab wound, according to the postmortem examination report caused severe bleeding which resulted in death.

Being aggrieved with the sentence of 20 years passed against him the appellant came to this Court with the following ground of appeal:

"That the sentence of 20 years meted out to the appellant was too severe particularly in the light of the mitigating factors that were presented to the court."

At the hearing of the appeal the appellant was represented by Mr. Edmund Ngemela, learned advocate while the respondent Republic was represented by Ms. Rose Sulle, learned State Attorney.

Submitting on behalf of his client, Mr. Ngemela argued that in sentencing the appellant, the trial court failed to take into account the

mitigating factors making the sentence to be excessive in the circumstances of the case. He pointed out that the appellant had pleaded guilty and death was a result of a fight. In support of his argument the learned counsel referred us to **Silvanus Leornard Nguruwe v R**. [1981] TLR 66. As for the sentence of 20 years minus the time spent in remand custody that the learned judge imposed, the learned counsel submitted that the trial court ought to have specified the exact period that the appellant was to spend in prison following his conviction.

Ms. Sulle on the other hand argued that the trial judge exercised her discretion properly in imposing the 20 year prison term on the manslaughter charge. She contended further that the trial judge considered the mitigating factors that were tabled before her before she passed the sentence. In any case, she went on, the charge of manslaughter of which the appellant had been convicted carried with it a sentence of life imprisonment. She urged us not to interfere with the sentence passed by the trial court as the Court being an appellate Court would have no justification in the circumstances of this case to interfere with the sentence passed.

There is no gainsaying that sentencing is the domain of a trial court. An appellate court may intervene only under special circumstances. In **Patrick Matabaro @ Siima & Another v. Republic**, Criminal Appeal No. 333 of 2007, **Medard Karumuna @ Lugosura v. Republic**, Criminal Appeal No. 332 of 2007, and **Philipo Pastory & Another v. Republic**, Criminal Appeal No. 331 of 2007 (all unreported), the Court made reference to a **Handbook on Sentencing** with a particular reference to Tanzania by Brian Slattery where the learned author made the following observations with regard to interference by an appellate court of a sentence imposed by a trial court:

> *"The grounds on which an appeal court will alter a sentence are relatively few, but are actually more numerous than is generally realized or stated in the cases. Perhaps the most common ground is that a sentence is "manifestly excessive" or as is sometimes put, so excessive as to shock. It should be emphasized that "manifestly" is not mere decoration, and a court will not alter a sentence on appeal simply because it thinks it is severe. A closely related ground is when a sentence is manifestly "inadequate". A sentence will also be overturned when it is based upon a wrong principle of*

sentencing.....An appeal court will also overturn a sentence when the trial court overlooked a factor, such as that the accused is a ...first offender, or that he has committed the offence while under the influence of drink. In the same way, it will quash a sentence which has obviously been based on irrelevant considerations....Finally an appeal court will alter a sentence which is plainly illegal, as when corporal punishment is imposed for the offence of receiving stolen property."

The question that we must answer is whether the sentence was manifestly excessive or to put it in another way whether it was so excessive as to shock. We need to mention at this point that an appellate court will not interfere with a sentence merely because it thinks that if it had been in the shoes of the trial court it would have imposed a different sentence. Nor will it interfere simply because it feels that the sentence was too severe. Over the years as we have shown above, sentencing guiding principles have been developed with which we associate ourselves.

Looking carefully at the trial judge's consideration of the sentence it becomes apparent to us that she did not apply any wrong principle in sentencing nor did she fail to take relevant factors into consideration. She

specifically stated that she had taken into consideration mitigating factors raised by both sides. These included the fact that the appellant was a first offender, the fact that he had readily pleaded guilty, and the time that the appellant had spent in remand custody. The learned judge also considered the fact that the deceased lost his life in the course of a fight.

In view of the above circumstances we essentially find no justification to interfere with the sentence that was meted out against the appellant.

Before we are done we are constrained to address ourselves to the manner in which the sentence was meted out. After having imposed the 20 years prison term the learned trial judge went further and stated that the time the appellant had spent in remand prison was to be deducted from the 20 years prison term imposed. Both Mr. Ngemela and Ms. Sulle were of the view, which we also share, that the way the leaned judge proceeded in imposing the sentence was out of the ordinary. Imposing a sentence of 20 years imprisonment and saying that the period that was spent in custody was to be deducted meant that it was left to the Superintendent of prison to make calculations as to the exact period that the appellant was to spend in prison. We think that this was not proper as it could result in speculation. The trial judge was obliged to impose a sentence of a specific

period that was to be spent in period. This is not only what is normally done, but it is the proper practice. Usually, a specific period is imposed after the time spent in custody has been taken into consideration. In this case the appellant had been in prison for almost four years at the time of sentencing.

We have also observed that the judge signed a commitment warrant (which was addressed to the Superintendent of Prison Arusha) of 20 years imprisonment. This is inconsistent with what she had stated in the course of sentencing the appellant that the time spent in remand custody would be deducted from the 20 years imprisonment that was meted out. The commitment warrant is what authorizes the Superintendent of prison to take into custody a person sentenced to prison. It means, in effect, in this case that the appellant would have spent 20 years in prison because this is what the warrant stated.

Given the above circumstances we consider that it is our duty to put matters right. In the exercise of powers vested upon this Court under section 4 (2) of the Appellate Jurisdiction Act, Cap 141 R. E. 2002, we set aside the sentence of *20 years minus period spent in remand custody* meted out and substitute therewith, a specific sentence of 16 years

imprisonment. (this takes into account time spent in remand custody). We also set aside the warrant of 20 years imprisonment that was issued and direct that a warrant of 16 years imprisonment be issued instead. For the avoidance of doubt the 16 years imprisonment will start to run from 05 February, 2015 when the appellant was sentenced.

Save for specifying the exact period of the prison term that the appellant is to serve, the appeal is otherwise found to lack merit and we accordingly dismiss it.

Dated at **Arusha** this 06th day of October, 2015.

E. A. KILEO
JUSTICE OF APPEAL

I. H. JUMA
JUSTICE OF APPEAL

A. G. MWARIJA
JUSTICE OF APPEAL

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

E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL