IN THE HIGH COURT OF TANZANIA

AT MWANZA

APPELLATE JURISDICTION

(Mwanza Registry)

HIGH COURT CRIMINAL APPEAL NO. 27 OF 1997

Original Criminal Case No.9 of 1997 of the District Court of Geita District at Geita - Before K. M.Mrisho, Esq., District Magistrate

JAMES S/O TITO LUHANGA .... APPELLANT
(Original Accused)

Versus:

THE REPUBLIC .... RESPONDENT
(Original Prosecutor)

JUDGEMENT

MREMA, JUDGE

James s/o Tito alias Luhanga, herein after referred to as the appellant, was the accused in the District Court of Geita, at Geita, charged with grievious harm c/s 225 of the Penal Code. The learned trial district magistrate, Me. K.M. Mrisho, after hearing the evidence of the three prosecution witnesses (PW1, PW2 and PW3) and that of the accused he was satisfied that the case for prosecution against the appellant was proved beyond reasonable doubt. And in the result he convicted the accused (appellant) and sentenced him to three years imprisonment. It's that conviction and sentence which the appellant has sought to challenge by appeal therefrom to this court.

In his memorandum of appeal the appellant has raised four (4) grounds which apparently appear very general and repetetive, so I have proposed to deal with the appeal generally.

From the evidence, and as correctly submitted by the learned state attorney Mr. Rwabuhanga, there is strong evidence from William Mayoya (PW1), Fred Lubatemba (PW2) and Ibrahim Willison (PW3) to the effect that the quarrel which culminated to the incident of assaulting

the complainant, causing grievious bodily harm, was engineered by the appellant-accused. It's common ground that PW1, PW2 and PW3 were present at Charles Nyeresi's evidence drinking beer on the material day; and it is not controverted that the appellant (DW1) visited the bar at the same time and met the three witnesses. There is no dispute as well that DW1 (appellant) joined them, also, with a view to taking part in drinking.

It's the case for prosecution that DW1 requested PW1 (complainant) to buy him beer. PW1 told DW1 that he did not have money and that the beer PW1 was drinking was bought for him by his friend Fred (PW2). It would appear, this response did not please DW1 who replied that he (DW1) could as well buy beer for PW1. Appellant then went to his home and then returned with one bottle of beer and sat near PW1 and PW2. Then for no apparent reason DW1 started attacking PW1 by kicking him. PW2 adviced PW1 to move away from outside to the bar. While inside the bar PW1 heard a quarrel and on going out to see what was happening he noted that the quarrel was between PW2 and appellant. But just before PW1 said any word DW1 stopped quarrelling with PW2 and turned to PW1 whereupon he (DW1) hit PW1 with a beer bottle on his face and as a consequence PW1 was grievously injured by the broken glasses of the bottle.

On the other hand DW1 gave a different story. According to him, he went to attend a short call(of nature). When he returned to join his colleagues (PW1 and PW2) PW1 threw away the stool on which DW1 was sitting and then he poured liquid beer on the appellant. PW1 then seized DW1 by the collar of his shirt and in the process of that tussle between them both fell in a gutter. Thereafter each one of them rose up and went away.

The learned state attorney supported the conviction on the weight of evidence on record. On my part I have re-assessed the evidence on record and I am lured to incline to the view of Mr.

Rwabakanga. The appellant was unable to raise reasonable doubt as to why PW2 and PW3 should give evidence in support of PW1's assertion against the appellant. It was never suggested in the evidence that these two witnesses had any reason to point a finger to the guilt of the appellant. The offence was committed in a public place where there were many beer boozers but it is surprising that DW1 failed to call at least one witness to support his other side of the story. The PF3 (exhibit "P1&2") confirms that the assaults on PW1 were inflicted by a blunt weapon amounting to dangerous harm; and dangerous harm means "harm endangering life" see interpretation - section 5 of the Penal Code. Thus, from the totality of evidence on record there is no doubt that the appellant unlawfully wounded the complainant c/s 225 of the Penal Code. And for the same reason I dismiss the appeal forthwith.

As to the sentence of three years imprisonment imposed against the appellant, I refrain from interfering with the same because the maximum punishment provided under section 225 of the Penal Code is seven (7) years imprisonment: and so, three years custodial sentence is appropriate under the circumstances. In sum, the appeal is dismissed.

AT MWANZA:

15/12/99

A. C. MREMA

JUDGE

Delivered at Mwanza,

in the abosence of the appellant and State Attorney. Appellant should be notified in the prison by supplying to him copy of judgement so that he may exercise his option to appeal.

A. C. MREMA

JUDGE

15/12/991