IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: RUTAKANGWA, J.A., MASSATI, J.A., And MUGASHA, J.A.)

CRIMINAL APPEAL NO. 94 OF 2016

EDSON SIMON MWOMBEKI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Mwanza)

(De-Mello, J.)

dated the 14th day of December, 2015
in
HC. Criminal Appeal No. 119 of 2015

JUDGMENT OF THE COURT

12th & 20th October, 2016

MUGASHA, J.A.:

The appellant **EDSON SIMON MWOMBEKI** was charged in the District Court of Nyamagana of the offence of rape contrary to sections 130(1) and (2) (e) and 131(1) of the Penal Code Cap. 16 R.E. 2002. The charge sheet alleged that on 17th January, 2014 at **SUMAYI HOTEL – RUFIJI STREET** within Nyamagana District in the City and region of Mwanza the

appellant raped **BEATRICE LUCAS** a 16 year old girl (PW1). The appellant denied the charge.

To prove its case the prosecution paraded six witnesses who are: PW1, PW2 **WINIFRIDA PETER**, PW3 **GIOSANDU MALUNGUYA,** PW4 **E.6968 D/CPL JOSEPH,** PW5 **SHALOM MASAME** and PW6 **JACKSON JUDICATOR.** The prosecution tendered two documentary exhibits (Summons to appear and the Statement of **SAMIRA MAHENGA** the attendant at **SUMAYI** Hotel).

BEATRICE LUCAS introduced herself to be 16 years old born on 21/6/1997 and she used to live with her mother (PW2). She recalled that once she was possessed by demonic attacks and the appellant prayed for her in his church and she was eventually healed. Sometime in December, 2013 when she was on school vacation, the appellant agreed that she reside at his home until when the school reopened on 13/01/2014. During the said vacation, PW1 was given tuition lessons by Jacqueline, the daughter of the appellant.

On 13/1/2014, the appellant called PW2, and told her that he would take PW1 back to school together with his children who were also going to school in Mwanza. They agreed to meet at Mabuki but as PW2 did not

hear from the appellant, she decided to go to Shinyanga and the appellant told her that he will be taking PW1 to school on 17/01/2014. On that assurance, PW2 informed her brother (PW3) on the scheduled arrival of PW1 on 17/1/2014. PW2 also gave her brother the phone number of the appellant so that they could communicate in respect of PW1's arrival. However, according to PW3, despite making follow ups, the appellant kept on promising that PW1 will be arriving on 17/1/2014. PW3 on the same day inquired and the headmistress of Kassa School confirmed that PW1 did not sleep at Kassa Secondary School. However, PW3 did not see PW1 until the following day with breaking news that she was raped by the appellant.

PW1 recounted to have left Shinyanga for Mwanza together with the appellant, his son and PW6. The appellant initially dropped the two boys at their school and promised that he would to take her to school on the same day. However, the appellant instead, took her to **SUMAYI** Hotel and left her there.

At 23.00 hrs the appellant resurfaced carrying food to her. Then, the appellant went to the bathroom which was in the same room. He

came out, shortly later, wearing a white singlet and yellow shorts and he proposed to make love to PW1 which she declined. Thereafter, the appellant forcefully undressed her; he also undressed himself and had carnal knowledge of her. According to PW1, she did not raise any alarm because the appellant had threatened to kill her. PW1 slept in the same room with the appellant until the following morning, when the appellant advised her to tell her parents that she had slept at Kassa Secondary School. From the predicament she found herself in, PW1 travelled to Magu where she told her uncle (PW3) that she slept at **SUMAYI** Hotel where Bishop Mwombeki, the appellant, forced her to have sexual intercourse with him. She was directed by PW3 to go back to her mother in Shinyanga. PW1 went straight to Shinyanga and narrated to her aunt the ordeal of being raped by the appellant at **SUMAYI** Hotel. Later the aunt revealed the episode to PW1's mother (PW2) and the incident was reported to the police and PW1 was taken to the hospital for medical examination.

Apart from PW5 testifying that on the fateful day she did see the appellant who had brought the two boys, she confirmed to the trial court that on 17/1/2014, PW1 did not sleep at Kassa Secondary School but she

had left with the appellant after the latter had dropped the two boys at the school. This piece of evidence is confirmed by PW6 Jackson who testified that after the appellant dropped them at school on 17/1/2014, he remained outside with PW1. PW4 6968 Dcpl Joseph's account is about the investigation of the matter whereby he interrogated the witnesses and confirmed that on 17/1/2014, PW1 was raped by the appellant at **SUMAYI** hotel in a room registered in the name of Edson Kate. Since **SAMIRA MAYENGA** who was the attendant at **SUMAYI** Hotel could not be traced, her statement was tendered in evidence under section 34 B (2) of the Evidence Act [**CAP 6 RE. 2002**] as exhibit P2.

In his sworn evidence, the appellant denied the charge. It was his defence that, he knew PW1 as he is the one who prayed for her when she was possessed by demons. He added that, he knew PW2 since she is the one who told him about PW1's school at Magu. Apart from stating that on 17/1/2014 he did travel to Mwanza with PW1 and the two boys, he claimed to have dropped PW1 at Igoma Bus Stand and on the following day on 18/1/2014, he returned to Shinyanga. He denied to have hired a room at **SUMAYI** Hotel. He tendered his Voter ID Card and a Passport to confirm that his name is **EDSON SIMON MWOMBEKI** and not **EDSON KATE.**

In his Judgment, the learned trial Resident Magistrate found PW1 to be a credible witness who made a sequential narration of events of how she was raped by the appellant on 17/01/2014. On the strength of her evidence, and notwithstanding the absence of medical evidence, he found the prosecution to have proved the offence of rape against the appellant. He convicted and sentenced him to imprisonment for thirty years.

Aggrieved by the conviction and sentence, he appealed to the High Court claiming that the offence of rape was not proved beyond reasonable doubt. The appeal was dismissed in its entirety, hence this appeal. In the Memorandum of Appeal the appellant has raised the following grounds:

> *"1. That the High Court being the first appellate court abdicated its duty by failing to properly review the evidence afresh.*
>
> *2. That as the reception of exhibit P2 was against the law, the 1st appellate Court ought to have expunged it from the record.*

3. *That from the evidence on record an adverse inference should have been drawn from the failure by the prosecution to produce the birth certificate of PW1 and other important witnesses.*

4. *That as the age of the victim is the substratum of the offence of rape under Section 130(1) and (2)(e) of the Penal Code in the absence of its proof beyond reasonable doubt, the 1st appellate court erred in confirming the appellant's conviction.*

5. *That as a whole the evidence on record and the law applicable does not support the appellant's conviction."*

At the hearing of the appeal, the appellant was represented by Mr. Salum Magongo and Mr. Anthony Nasimire, learned counsel. Mr. Magongo argued the first four grounds, while Mr. Nasimire argued the 5th ground of appeal.

Arguing the first ground of appeal Mr. Magongo submitted that the first appellate court did not re-evaluate the entire evidence and as such,

the inconsistencies in the evidence of PW1, PW2 and PW3 impeaching the credibility of PW1 were not resolved. He pointed out the inconsistencies to be: **One,** PW1's account that she bled and her clothes were stained with blood stains a claim which does not feature in the evidence of PW3 and PW2 who were informed about the rape by PW1, considering that no one saw the blood stained clothes. **Two,** the delayed reporting on the rape incident to the police by PW1, PW2 and PW3. **Three,** the varying evidence of PW1 and PW3 if PW1 went to Shinyanga on her own or she was taken thereto by her uncle PW3. He argued that, with these inconsistencies the Court should not consider PW1 a credible witness. He referred us to the case of **PETER BERNARD @ BAD FUNZA VS REPUBLIC,** Criminal Appeal No. 136 of 2011 (unreported). Mr. Magongo urged us to re-evaluate the evidence for meeting the ends of justice and on this he relied on the case of **MOHAMED MATULA V. R., TLR** (1995) 6.

Addressing the second ground of appeal, Mr. Magongo submitted that Exhibit P2 was wrongly admitted because it did not comply with section 34(B)(2)(e) of the Evidence Act. He added that, following a notice lodged by the defence counsel objecting Exhibit P2, the trial magistrate

should not have admitted Exhibit P2 into evidence. In this regard he urged the Court to expunge Exhibit P2 from the record.

As for the 3rd ground of appeal, Mr. Magongo submitted that PW1's aunt and the doctor were material witnesses but they were not called by the prosecution. Relying on the case of **PETER MASANJA MAKANSI VS REPUBLIC,** Criminal Appeal No. 327 of 2007 (unreported), he urged us to fault the lower courts for not drawing an adverse inference against the prosecution on that account.

In respect of the 4th ground of appeal, Mr. Magongo submitted that, the age of PW1 was not proved on account of non production of the Birth Certificate which features in the evidence of PW1 and PW3. He argued that, the lacking Birth Certificate which was to confirm that PW1 was actually 16 years old, rendered the charge of rape not proved beyond reasonable doubt against the appellant and urged us to allow the appeal. To back his argument, with leave of the Court, Mr. Magongo referred us to the case of **CHRISTOPHER RAFAEL MAINGU vs REPUBLIC,** Criminal Appeal No. 222 of 2004 (unreported) which was not in the list of authorities earlier on filed. Mr. Magongo did not furnish the Court with the said case as promised.

Mr. Nasimire faulted the first appellate court, which determined the defence of *alibi* whereas the appellant neither filed notice of it nor did he intend to rely on that defence. He added that, the first appellate court misapprehended the evidence by concluding that, in the light of exhibit P2, the appellant slept in room No. 8 at **SUMAYI** Hotel which was registered in the name of Edson Kate while the prosecution did not amend the charge sheet to the same regard. In a further attack on the credibility of PW1, Mr. Nasimire added that if PW1 was raped, it is unimaginable that on the following day she had managed to travel to Magu. He also submitted that, since it is the appellant's account that PW1 slept at Kassa Secondary School, the head of that school one Neema Mushi ought to have been paraded to adduce evidence instead of PW5, the matron. We have found this submission wanting because going by the evidence of the appellant himself, after leaving the school with PW1; he had dropped her at Igoma Bus Stand. Mr. Nasimire was also of the view that, the Doctor was a material witness in the circumstances of the case.

On the other hand, Mr. Marungu learned Senior State Attorney for the respondent resisted the appeal from the beginning. He opted to initially address us on the 3rd and 4th grounds of appeal. He pointed out

that the age of PW1 was proved by her mother (PW2) that PW1 was 16 years and as such, the Birth Certificate was not necessary. He referred us to the case of **LUCAS MAKINGA @ MADUHU VS REPUBLIC,** Criminal Appeal No. 269 of 2009 (unreported) to that effect. In the alternative, he argued that, even if PW1 was not under 18 still she did not consent to the forced sexual intercourse by the appellant who had earlier on threatened to kill her. Addressing us on the 2nd ground of appeal, he submitted that Exhibit P2 was properly admitted since before the hearing, a copy of it had been duly served on the appellant who had lodged an objection challenging the name of Edson Kate but not its admissibility, which objection was determined by the trial court. As such, he urged the Court not to fault the High Court for not expunging Exhibit P2.

The learned Senior State Attorney conceded to the 1st ground on the insufficient re-appraisal of evidence by the first appellate court. However, he argued that, the alleged inconsistencies in the evidence of PW1, PW2 and PW3 are minor and do not go to the root of the matter which is whether or not PW1, aged 16 years, was carnally known by the appellant on the strength of the credible evidence of PW1. He argued that since PW1 was raped at such odd hours of the night, threatened by

the appellant and being a stranger in Mwanza, she had no option but to sleep in the same room with the appellant. On this, we have to state at once that we have found ourselves at one with Mr. Marungu. Under these unfriendly circumstances, PW1 had to resign herself to her fate until the next morning but on the following day she went to Magu and narrated the rape incident to PW3 and mentioned the appellant to be the culprit. On reaching Shinyanga to her aunt, she repeated her ordeal and mentioned the appellant as the assailant. He urged the Court not to fault her credibility due to the delay by PW2, PW3 and the aunt to report the matter to the Police.

He further argued that since the medical evidence does not establish rape but rather the victim whose evidence is credible, the doctor was not a material witness in the present case. Besides, he added that, even if the doctor was summoned his evidence could not add value on the prosecution case. He referred us to the case of **SELEMANI MAKUMBA VS REPUBLIC,** Criminal Appeal No. 94 of 1994 TLR [2006] 379. He urged the Court to dismiss the appeal and uphold the conviction.

In a brief rejoinder, Mr. Magongo argued that in the case of **LUCAS MAKINGA VS REPUBLIC** (supra) the issue of age was an afterthought

which is distinguishable from the present appeal. Thus, the Birth Certificate ought to have been produced at the trial.

Having carefully considered the arguments for and against the appeal and the evidence on record we are alive to the fact that, the conviction of the appellant which was upheld by the High Court basically hinges on the credibility of PW1. In this regard, this being a second appeal, it is trite law that the Court should rarely interfere with the concurrent findings of lower courts on the facts unless it is shown that there has been a misapprehension of the evidence; a miscarriage of justice or violation of a principle of law or procedure. (**See SALUM MHANDO VS REPUBLIC**) (supra), **ISAYA MOHAMED ISACK VS REPUBLIC** Criminal Appeal No. 38 of 2008 (unreported), **DPP VS JAFFAR MFAUME KAWAWA (1981) TLR. 149** and **SEIF MOHAMED E.L ABADAN VS REPUBLIC,** Criminal Appeal No. 320 of 2009 (unreported).

In **SHABAN DAUDI VS REPUBLIC**, Criminal Appeal No. 28 of 2001 (Unreported) the Court said:

> *"..... Credibility of a witness is the monopoly of the trial court but only in so far as the demeanour is concerned. The credibility of a witness can be determined in two other*

ways. ***One****, when assessing the coherence of the testimony of that witness,* ***two,*** *when the testimony is considered in relation to the evidence of other witnesses, including that of the accused person. In those two occasions, the credibility of a witness can be determined even by a second appellate court when examining the findings of the first appellate court."*

This Court in **FELEX KICHELE** and **EMMANUEL TIENYI @ MARWA VS. REPUBLIC,** Criminal Appeal No. 159 of 205 (unreported) said: -

"It is an accepted practice that a second appellate court should very sparingly depart from concurrent findings of fact by the trial court and the first appellate court. Indeed, there is a presumption that disputes on facts are supposed to have been resolved and settled by the time a case leaves the High Court. That is part of the reason why under section 7(6)(a) of the Appellate Jurisdiction Act, 1979 it is provided that a party to proceedings under Part X of the CPA, 1985 may appeal to the Court of Appeal on a matter of law but not on a matter of fact".

We are aware of a salutary principle of law that a first appeal is in the form of a re-hearing. Therefore, the first appellate court, has a duty to re-evaluate the entire evidence on record by reading it together and subjecting it to a critical scrutiny and if warranted arrive at its own

conclusions of fact. (See **D. R. PANDYA v R** (1957) EA 336 and **IDDI SHABAN @ AMASI vs. R**, Criminal Appeal No. 2006 (unreported).

We are as well aware that in **GOODLUCK KYANDO VS REPUBLIC,** (2006) TLR 363, the Court laid down the following principle:

> *"Every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons not believing a witness."*

Good reasons for not believing a witness include the fact that the witness has given improbable or implausible evidence, or the evidence has been materially contradicted by another witness or witnesses. (See **MATHIAS BUNDALA VS REPUBLIC,** Criminal Appeal No. 62 of 2004 (unreported).

In the light of the above, we would have expected the High Court in this case, to have re-appraised the evidence in the determination of the appellant's appeal and particularly on the alleged inconsistencies.

At page 87 of the record of appeal, the first appellate judge was requested by the appellant's counsel to re-evaluate the certainty of the evidence of PW1, PW2 and PW3 on the following fronts: **One,** if PW1 who claimed to have bled after the rape and her clothes were stained

with blood, why is such evidence missing in the testimonial account of PW2 and PW3? **Two,** the delayed reporting of the rape incident at the police. **Three,** since the appellant stated that PW1 slept at Kassa Secondary School why was the head of that school not summoned as a prosecution witness? **Four,** did PW1 go to Shinyanga on her own or was she taken thereto by PW3?

Having revisited the evidence of PW1 we are satisfied that PW1 was a credible witness whose testimonial account reveals how she was ravished by the appellant at **SUMAYI** Hotel instead of being taken to school as promised by the appellant. Moreover, PW1 named the appellant at the earliest moment to PW3 when she arrived at Magu on 18/1/2014. In this regard, in our considered view, the inaction by PW2 and PW3 to immediately report to the Police does not in any way impeach the credibility of PW1 as viewed by the appellant's counsel. The case of **PETER BENARD @ BAD FUNZA VS REPUBLIC** (supra) cited by the appellant is distinguishable because in that case the victim concealed the name of the assailant until when she was punished by her mother and pressured by other relatives. In the present case PW1 was not pressurized into naming the appellant as the assailant. We have furthermore found no

inconsistencies in the evidence of PW1 and PW3 regarding her return to Shinyanga. She never said to have returned to Shinyanga alone.

We have noted that it was during cross examination when she replied to have bled and that her clothes were stained with blood. The situation was similar with PW2 but PW3 was not neither examined nor cross- examined on the matter. We agree with the learned Senior State Attorney that, bleeding is not one of the ingredients of rape but rather it constitutes the magnitude of injury of the victim. Furthermore, since the appellant distanced himself with assertions that PW1 slept at Kassa Secondary having accounted that he dropped PW1 at Igoma Bus Stand in the evening of 17/01/2014, the Head of Kassa Secondary School was not a material witness.

In view of the above, apart from being satisfied that the variations are minor and do not go to the root of the matter on the strength of credible evidence of PW1, it was incumbent on the first appellate court to resolve the variations. In this regard the first ground of appeal is without merit, as the appellant has not demonstrated to have been prejudiced at all by this.

Counsel marshalled arguments for and against expunging from the record (exhibit P2) the statement of **SAMIRA MAKENGA** who was the attendant of **SUMAYI** hotel who could not be located and her statement made at the police was tendered into the evidence. Section 34(B) (2) of the Evidence Act (supra) as amended by Miscellaneous Written Laws Amendment Act No. 6 of 2012 states as follows:

"A written statement may only be admissible under this section–

> *(a) where its maker is not called as a witness, if he is dead or unfit by reason of bodily or mental condition to attend as a witness, or if he is outside Tanzania and it is not reasonably practicable to call him as a witness, or if all reasonable steps have been taken to procure his attendance but he cannot be found or he cannot attend because he is not identifiable or by operation of any law he cannot attend;*
>
> *(b) if the statement is, or purports to be, signed by the person who made it;*
>
> *(c) if it contains a declaration by the person making it to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that if it were tendered in evidence, he would be liable to prosecution for perjury if he willfully stated in it anything which he knew to be false or did not believe to be true;*
>
> *(d) if, before the hearing at which the statement is to be tendered in evidence, a copy of the statement is served, by*

or on behalf of the party proposing to tender it, on each of the other parties to the proceedings;

(e) if none of the other parties, within ten days from the service of the copy of the statement, serves a notice on the party proposing or objecting to the statement being so tendered in evidence: ***Provided that the court shall determine the relevance of any objection.***

(f) if, where the statement is made by a person who cannot read it, it is read to him before he signs it and it is accompanied by a declaration by the person who read it to the effect that it was so read."

With respect we do not agree with Mr. Magongo that once objection is raised then the trial court should cease from admitting the document. The adverse party upon being served with the intended statement of a witness who cannot be found, has a statutory right to lodge an objection against admissibility within a specified time. We are fully aware, Amendment Act No. 6 of 2012 introduced a clear statutory obligation on the courts to determine the relevance of any objection on the admissibility of such statements.

In this regard, we wish to point out that, the trial court has jurisdiction to determine any objection on admissibility of the statement under section 34(B) (2) (e) of the Evidence Act (supra). To argue

otherwise, would tend to make nonsense of the intention of the legislature a reality not within the grasp of Mr. Magongo, render the courts impotent and defeat the ends of justice. In other words, the administration of justice will be hampered if a judge or magistrate is blocked to determine the objection on the admissibility of the statement of a person who cannot be found.

In this regard, since the trial court determined the objection on admissibility of exhibit P2, we are satisfied that it was properly admitted into the evidence and we find no cogent reasons to expunge it from the record. This renders ground two unmerited. However, without prejudice to the credible evidence of PW1, we agree that exhibit P2 was wrongly acted upon by the courts below to conclude that Edson Kate is the name of the appellant. But even in the absence of proof that Edson Kate was an *alias* for the appellant it is overwhelmed by the credible evidence of PW1 that in fact it was the appellant who spent the night with her in room No. 8 at **SUMAYI** Hotel, as to the raping.

The major complaint of the appellant in grounds 3 and 4 is to the effect that as the age of PW1 was not proved due to non production of her birth certificate, the charge of rape under section 130(1) and (2) (e)

was not proved against the appellant. The learned State Attorney maintained that, the age of PW1 was proved by her mother PW2.

In **EDWARD JOSEPH VS REPUBLIC,** Criminal Appeal No. 19 of 2009 (unreported), the Court said:

> *"Evidence of a parent is better than that of a medical Doctor as regards the parent's evidence on the child's age."*

In **IDDI S/O AMANI VS REPUBLIC,** Criminal Appeal No. 184 of 2013 (unreported), the Court was confronted with a scenario whereby, the appellant claimed that no birth certificate was tendered to prove the age of the victim. The Court relied on the evidence of the father as being in a better position to prove the age of the victim who was his daughter. After all, the contents of the Birth Certificate by and large depend on the information received from the parents.

The Court dealt with a similar issue in the case of **HAMISI MSITU v REPUBLIC**, Criminal Appeal No. 71 of 2009 and categorically said:

> *"...We do not have to reiterate that the basic principle that it is upon the prosecution to prove that issue and to do so beyond reasonable doubt. Was that done?"*

Since Mr. Magongo insisted that the lacking birth certificate rendered the prosecution not proved against the appellant, we feel obliged to pose the

same question which is relevant in the present matter. Was that done by the prosecution? The answer is in the affirmative because PW1 stated to be 16 years old, and at page 15 of the record her mother PW2 confirmed that her daughter Beatrice is 16 years old as she was born on 21/6/1997 and on 21/6/2014 she was to attain 17 years. Mr. Magongo who belatedly cited to us the case of **CHRISTOPHER RAFAEL MAINGU VS REPUBLIC** (supra), did not supply it to the Court as he promised. Having searched for it, we have found that it belies him as the Court did neither discuss nor determine the issue relating to the proof of age of the victim by a Certificate of Birth. In **CHRISTOPHER RAFAEL MAINGU** (supra) the Court said that, in the total absence and cogent evidence that the appellant raped the victim on a date stated in the charge it would be improper in a criminal charge to assume that the prosecution proved its case even on a balance of probabilities. This does not measure with the present appeal whereby date on which PW1 was raped is stated in charge and it is supported by the prosecution evidence. We hope and pray that in future, senior counsel Mr. Magongo would always look before he leaps.

In the absence of appellant's contention about the age of the PW1 and in view of the unchallenged evidence of PW2, we are satisfied that

the prosecution did prove that PW1 was below the age of 18 years on the date she was raped by the appellant. Therefore grounds 3 and 4 are without merit.

Since it is settled law that medical evidence does not prove rape, the medical doctor was not a material witness as in the light of credible evidence of PW1 we are satisfied that she was better placed to testify and explain how she was raped by the appellant.

We wish to address the appellant's complaint on the first appellate Court determining the defence of *alibi*. It is settled law that, when the court takes cognizance of *alibi* of which no notice was given it must analyse it and give reasons for rejecting it. (See **LUDOVICK SEBASTIAN VS REPUBLIC**, Criminal Appeal No. 318 of 2007 (unreported). In the present matter, since the appellant stated that on 17/1/2014, he was not at **SUMAYI** Hotel but slept at another Pastor's Church, in essence he was denying to have been at the scene of the crime where the alleged rape allegedly occurred. The first appellate court properly determined and rejected the appellant's defence of *alibi* on the strength of the credible evidence of PW1.

On the whole, the credible evidence of PW1 militates against the appellant who was all out to disguise that on 17/01/2014, PW1 slept at Kassa Secondary School and neither himself nor PW1 slept at **SUMAYI** Hotel.

In view of the aforesaid, we are satisfied that, the charge of rape was proved against the appellant beyond reasonable doubt. Therefore, the appeal is without merit and it is dismissed in its entirety.

DATED at **MWANZA** this 18th day of October, 2016.

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

S.A. MASSATI
JUSTICE OF APPEAL

S.E.A. MUGASHA
JUSTICE OF APPEAL

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

P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL