**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: MUGASHA, J.A., NDIKA, J.A., And KITUSI, J.A.)**

**CRIMINAL APPEAL NO. 542 OF 2017**

**1. KURWA MOHAMED MWAKABALA.....1ST APPELLANT**
**2. DEOGRATIAS ADOLF KIMARIO @ BABA MKWE @ MANGI.....2ND APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**(Appeal from the decision of the Resident Magistrates' Court of Dar-es-salaam at Kisutu)**

**(Dudu PRM Ext. Jurisdiction.)**

**dated the 17th day of November, 2017**
**in**
**Criminal Session Case No. 64 of 2015**

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## JUDGMENT OF THE COURT

28th April & 8th May, 2020

## MUGASHA, J.A.:

Kulwa Mohamed Mwakabala, Deogratias Adolf Kimario @ Baba Mkwe @ Mangi the 1st and 2nd appellants respectively, were charged with two counts of murder contrary to section 196 of the Penal Code Cap 16 RE: 2002. It was alleged by the prosecution that on 18/12/2012 at Kariakoo area, Ilala District within Dar-es-salaam Region, the appellants jointly and together did murder Ahmed Issah and Sadick Juma, the deceaseds. They

denied the charge and to prove its case, the prosecution paraded four witnesses and three documentary exhibits namely, two Postmortem examination reports (Exhibit P1), Sketch Map of the scene of crime (Exhibit P 2) and a caution statement of Kulwa Mohamed Mwakabala, (Exhibit P3).

Brief facts of the case were as follows: On 18/12/2012 Ahmed Issah one of the deceased persons along with Yusuph Mire while taking money to the Bank aboard a motor vehicle with registration No. T 538 BBQ make Toyota Corolla, were attacked by bandits who fired gun shots. Ahmed Issah was hit by a bullet and died on the spot whereas Yusuph Mire was injured. Since the incident attracted the attention of passersby some ran away for safety while others attempted to chase the bandits who opted to fire bullets randomly whereby caught in the web was one Sadick Juma who was shot and succumbed to death. Also, in a bid to escape one bandit was stoned by the mob and was later reported to be dead. The dead bodies of Ahmed Issah and Sadick Juma were taken to Muhimbili National Hospital and upon examination, the cause of death was established to be hemorrhagic shock due to gunshot wounds/ injury. As the matter was in the hands of the Police, an investigation was conducted and it revealed

that those involved in the banditry in question included the appellants and three others who were discharged after the withdrawal of charges against them by the Director of Public Prosecutions (the DPP) at the committal stage.

Those who testified for the prosecution were Samwel Jacob (PW1) and Alawi Swalehe Chilomba (PW4) who happened to be at the scene of crime and E. 8431 D/Sgt Mohamed (PW2) and Tupendane Sagunda Kuleng'wa (PW3) who were involved in the investigation. The stated witnesses unveiled the following account: On the fateful day, PW1 a security guard stationed at Khowa Bureau De Change was on duty from 06.00 am. While there, at about 10.00 am he heard a gunshot at Atra Shop near Slip in Hotel which was 100 meters away. As he concentrated on that direction, he saw a reversing motorcycle followed by a motor cycle which was ridden by a man holding a gun. The reversing motor vehicle had to stop after knocking another car which made it opportune for the bandits to open its boot and picked a black bag. Then, the bandits ran away vide Livingstone Street. Although PW1 in his testimonial account stated to have identified the bandits by their facial and physical appearance he could not to remember them and insisted that none of

those he saw at the scene of crime was present in the dock. He maintained so when he was cross-examined by the prosecuting attorney.

Alawi Swalehe Chilumba (PW4), recalled to have heard people shouting "*mwizi*""*mwizi*", rushed at the scene of crime and he saw three bandits struggling in vain to restart a motor cycle. After alarm was raised, a person who was pulling a cart tried to block the motor vehicle, but he was shot and died instantly. According to PW4's while hiding behind the motor vehicle he managed to have identified the appellants by their facial appearance claiming to have observed them within the period of the duration of the fateful incident which lasted for about 10 to 15 minutes. He as well, testified to have identified them at the identification parade at Oyster Bay police station. When cross-examined by the learned defence counsel he replied that, the appellants were strangers but he had marked their faces adding that, among the three bandits the one who held a gun was not in the dock.

Another investigator was E. 8431 D/Sgt Mohamed (PW2). He told the trial court to have acted on a tip from the informer who had eavesdropped Mangi, Kulwa, Kaoya, Sele Alidawa, Kelvin, Imma and Jose

bragging about the fateful incident. Thus, on 5/1/2013 he arrested the 2nd appellant who then obliged in setting a trap which facilitated the arrest of the 1st appellant. PW2 also recounted that at the Police the cautioned statements of the appellants were recorded and they both confessed to have been involved in the robbery incident whereby the deceased were murdered. On the part of Tupendane Sagunda Kuleng'wa (PW3) a retired police officer, he gathered that, a sum of TZS 150,000,000/= was stolen in the fateful incident and that those who died included the driver of the motor vehicle and one bandit named **FRANK AGUSTINO KAAYA@ JERRY** who held a gun, had run out of bullets and opted to surrender himself at a nearby shop but succumbed to death after being stoned by a mob. Moreover, PW3 recounted that, at Oyster Bay Police station he interrogated the 1st appellant who confessed to have committed the murder.

The appellants denied the accusations by the prosecution. On his part, the 1st appellant told the trial court that, he happened to be at the SitakiShari police station after being accused to have stolen a private car which belonged to one Christina who had employed him as a driver. Then he remained in custody until on 22/1/2013 when he was taken to Ilala

District Court and charged with murder. Apart from testifying that PW4 was a stranger to him, he denied to have been identified as the culprit at the identification parade which was alleged to have been conducted at Oyster Bay Police Station. As for the 2nd appellant who introduced himself as a shopkeeper at Uwanja wa Ndege, he recalled to have been accused of selling stolen cooking oil, went at the Police station on 15/1/2013 and was arrested. He remained behind bars until on 22/1/2013 when he was charged with the offence of murder together with a stranger. He denied to have been identified at the identification parade which was conducted at Oyster bay police station.

After a full trial, the Principal Resident Magistrate summed up the case to the assessors who all returned a unanimous verdict of guilt. Ultimately the appellants were convicted and sentenced to suffer death by hanging.

Aggrieved, the appellants have appealed to the Court challenging the decision of the trial court. In the joint memorandum of appeal, the grounds of complaint are as follows:

1. That, the learned trial PRM (Ext, J.) erred in law and facts for convicting the appellants relying on visual identification at the scene

of crime while there were unfavourable conditions for correct identification.

2. That, the learned trial PRM (Ext, J.) erred in law and facts for holding that the appellants were correctly identified by PW1 and PW4 an at the scene of crime while in dock identification each gave his own version different from another.

3. That, the learned trial PRM (Ext, J.) erred in law and facts in taking and relying on repudiated caution statement, Exh. P.3 allegedly to have been made by the 1st appellant without being given an opportunity to object it before being tendered and admitted in evidence.

4. That, the learned trial PRM (Ext, J.) erred in law and facts for failing to draw an adverse inference against the prosecution side for their failure to call a material witness and/or produce material exhibits without assigning good reasons.

5. That, the learned trial PRM (Ext, J.) erred in law and facts in holding that the Prosecution did prove its case beyond reasonable doubt

without considering that the evidence tendered is weak and falls short of supporting evidence.

The appellants filed written submissions containing arguments in support of the appeal. To prosecute the appeal, the appellants had the services of Mr. Henry Chaula, learned counsel whereas the respondent had the services of Ms. Lilian Rwetabula and Ms. Monica Ndakidemi both learned State Attorneys.

Apart from adopting the written submissions in support of the appeal filed by the appellants, in addressing the grounds of appeal, Mr. Chaula opted to argue the 1st and 2nd grounds together and each of the remaining three grounds separately.

On the first two grounds of appeal, reiterating what is contained in the written submissions, Mr. Chaula on behalf of the appellants faulted the trial court to have relied upon what he viewed as doubtful and contradictory evidence on the visual identification to convict the appellants. He pointed out that, although PW1 testified to have seen the appellants and attempted to give their description, he fell short of identifying any of the appellants in the dock. In this regard, Mr. Chaula

argued that, since PW1 and PW4 were both at the scene of crime, PW4's account that he identified the appellants at the scene and at the identification parade is doubtful on three fronts: **One,** it contradicted PW1's version who did not identify the appellants; **two,** there is no extract of the register of the identification parade to substantiate that PW4 identified the appellants at the parade; and **three** the horrifying situation and circumstances surrounding the occurrence of the offence in a busy and crowded Kariakoo area were not conducive for the proper identification of the appellants by PW4. In this regard, he argued that the possibilities of mistaken identity were not eliminated to warrant such evidence to be acted upon to convict the appellants. To back up his proposition he cited to us the case of **WAZIRI AMANI VS REPUBLIC** [1980] T.L. R. 250, **YASSIN HAMIS ALLY @ REPUBLIC**, Criminal Appeal No. 254 of 2013 (unreported).

In respect of the 3rd ground of appeal, Mr. Chaula submitted that, after the trial court overruled the preliminary objection raised by the defence counsel on a point of law relating to the cautioned statement, the trial court ought to have invited the appellants to address it on the voluntariness or otherwise of the cautioned statement and make a

determination which was not the case. He thus, argued that the cautioned statement of the 1st appellant was wrongly acted upon to ground the conviction of the appellants and it deserves to be expunged.

Pertaining to the 4th ground of appeal the appellants faulted the trial in not drawing an inference adverse to the prosecution which neither paraded certain material witnesses nor produced a number of material exhibits at the trial. On this, he pointed out that the material witnesses included the person who is alleged to have hit one of the bandits with a stone and the owner of the alleged stolen sum of TZS. 150,000,000/=. As for the material exhibits which were not tendered, they included the motorcycle which was on the fateful day alleged to be driven by the 1st appellant, a pistol found in possession of a dead bandit and the stolen TZS. 150,000,000/=.

Ultimately, in the 5th ground of appeal, the learned counsel submitted that the charge was not proved against the appellants and urged the Court to allow the appeal and set the appellants free.

On the other hand, the learned State Attorney supported the appeal contending that, the charge was not proved against the appellants

because the evidence on visual identification was discrepant whereas the remaining prosecution account did not connect the appellants with the charged offence of murder. On the aspect of discrepant visual identification, in addition to what was submitted by the appellants' counsel, she pointed out that apart from PW4 making generalised description of the appellants, he was obstructed to have a clear vision of the appellants while hiding behind a motor vehicle which made the conditions not conducive for the proper identification of the appellants. She added that, in the absence of the extract of the identification parade register the dock identification of the appellants is valueless. To support her propositions, she cited to us the cases of **ZUBERI @ ADHUNGU AND OTHERS VS REPUBLIC**, Criminal Appeal No. 597 of 2015 and **ANNES ALLEN VERSUS REPUBLIC**, Criminal Appeal No. 173 of 2017 (both unreported).

The learned State Attorney further submitted that the cautioned statement of the 1st appellant was properly admitted which is in line with what this Court said in the case of **PAULO MADUKA AND OTHERS VERSUS REPUBLIC**, Criminal Appeal No. 110 of 2007 (unreported). As to the documentary account on proof of death of the deceased persons, she urged the Court to expunge the autopsy reports because following

admission the reports were not read out to the appellants who were thus denied to know the contents of the documents in question. In this regard, she submitted that, although death could be proved by other evidence apart from the autopsy report, in the present case that is impossible because the doctor was not paraded as a witness and none of the prosecution witnesses knew the deceased or witnessed the conduct of the autopsy. In the premises, she argued that there is no connection between the death of deceased and the charged offence of murder as against the appellants. She concluded her submission by urging the Court to allow the appeal and set the appellants free.

After a careful consideration of the submissions by both learned counsel, the grounds of appeal and the record of appeal, the issue for our determination is whether the prosecution case was proved at the standard required in criminal cases. Before doing so, it is crucial to state that, this being a first appeal is in the form of a re-hearing. Therefore, as the first appellate court, we have 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 our own conclusions of fact. See - **D. R. PANDYA v REPUBLIC** (1957) EA 336.

Apart from the trial court finding that the conditions at the scene of crime were conducive for the correct identification of the appellants and that, PW1, PW2, PW3 and PW4 gave a credible account as suggested by their demeanour, it as well concluded what is evident from page 128 to 134 as follows:

> " *PW4 and PW1 were able to describe the physical appearance of the raiders whom they saw on the material time committing the offence telling this court that the rider of the motorcycle was young, thin, and black in colour, and the person who had been carrying a gun (pistol) was also young, fat and black in colour, and the other one young fat, and while (sic) in colour...PW4 and PW1 claimed to have explained or given the description to police officers who arrived to the scene of crime...and that their statements were recorded accordingly. Before this court PW4 managed to make dock identification pointing the first accused to be the one who was riding the motor cycle and the 2nd accused to be the one seated at the centre of motorcycle as passenger at the time of escaping from the scene of crime.*

Moreover, the trial magistrate concluded that, since the 1st appellant's cautioned statement was admitted without objection, it reflected the truth as to how the fateful incident was planned thus pinning

down the 1st appellant to the effect that both appellants had formed a common intention to execute an unlawful purpose to kill the deceased persons.

It is not in dispute that; the killing incident was committed during broad day light. The follow up question is whether the appellants were identified at the scene of crime. Before addressing that question it is crucial to revisit the principles underlying the proper identification as propounded by the Court. In the case of **WAZIRI AMANI VS REPUBLIC** (supra) the Court held:

> *(i) Evidence on visual identification is of weakest kind and most unreliable;*
>
> *(ii) No court should act on evidence on visual identification unless all possibilities of mistaken identity are eliminated and the court is fully satisfied that the evidence before it is absolutely water tight.*

The Court as well enumerated some of the factors to be considered in the determination of watertight identification which include:

> *"The time the witness had the accused under observation; the distance at which he observed him; the conditions in which such observation occurred, for instance, whether it*

*was day or night time, whether there was poor lighting at the scene; and further whether the witness knew or had seen the accused before or not."*

In the case at hand, though PW1 happened to be at the scene of crime he did not identify the appellants and his evidence is very clear that those he saw in the dock during the trial were not the persons he had seen at the scene of crime. This is reflected in part of his testimonial account at page 45 of the record of appeal as follows:

*"At that time I was very close to the scene of crime. I only marked the physical appearance of the person who was riding a motorcycle, as young, fat and black in colour there were also another person as passenger was young, fat and white in colour. At this time I cannot so easily identify them, I have forgotten them it is now over five years.... The motorcycle rider was youth person, black in colour"*

Besides, as correctly submitted by the learned State Attorney, PW4 made a general description of the appellants as reflected at page 78 of the record of appeal as follows:

*"There were three in total using one motor cycle I did see them clearly and marked their face their physical appearance the rider of the motorcycle was thin, short and black in*

*colour young one...The one who was at the centre was white in colour, fat, just a man aged than a rider.... The two accused person now in the dock are the oneS whom I saw them in the material fateful day were using motorcycle with T.301 CCW... I am the one who was involved to take the abandoned motor cycle ....to the Police Station."*

PW4's account does not reflect that he knew the appellants before the incident and he so intimated when cross- examined by the defence counsel at the trial. Thus, the description of the appellants made by PW4 as correctly submitted by the learned State Attorney, was generalised and not sufficing the proper identification of the appellants considering that, there are a number of other people with a similar description. As such, PW4 ought to have gone a step further to describe for instance the colour and type of the attire of the appellants at the scene of crime. We are fortified in that account in the light of what we said in the case of **AYUBU ZAHORO VS REPUBLIC,** Criminal Appeal No. 177 of 2004 as follows:

*"In considering whether the conditions are favourable for correct identification the court has consistently held that, in identifying an accused person where witness saw the accused for the first time,* ***there is need for the witness to describe the identity in detail."*** [Emphasis supplied]

At the trial, PW4 also claimed to have identified the appellants at the identification parade and in the dock. We found this account wanting because for reasons best known to the prosecution, the extract of the register of the identification parade was not tendered at the trial which leaves a lot to be desired. Thus, apart from a probability that the parade was not conducted, in the absence of the parade register, PW4's dock identification is valueless because it cannot be safely vouched that PW4 who was a stranger to the appellants had identified them before he was called to give evidence at the trial. This position was emphasised in of **ANNES ALLEN VS REPUBLIC** (supra) whereby apart from concluding that dock identification could be given less weight the Court relied on the case of **MUSSA ELIAS AND TWO OTHERS VS REPUBLIC,** Criminal Appeal No. 172 of 1993 (unreported) having said:

> *"... it is a well-established principle that dock identification of an accused person by a witness who is a stranger to the accused has value only where there had been as identification parade at which the witness successfully identified the accused before the witness was called to give evidence."*

Therefore, the finding by the trial magistrate that PW4 and PW1 explained and gave the description of the appellants to police officers who arrived to the scene of crime is wanting because it is entirely not backed by the record as none of those witnesses testified in that regard. Therefore, it was irregular for the trial magistrate to rely on extraneous matters and such, the appellants were convicted on the evidence which was not before the trial court.

Another factor which makes PW4's evidence self-defeating is his claim to have seen the appellants while hiding behind the car which obstructed his clear vision of the appellants. This still rendered conditions for the proper identification of the appellants not conducive as correctly argued by the learned State Attorney.

In the light of the stated rules governing the correct identification of the accused persons and PW4's account, the visual identification of the appellants was not absolutely watertight as it fell short of eliminating possibilities of mistaken identity and as such, it was unsafe to act on it to convict the appellants.

In respect of the third ground of appeal, the complaint on being denied opportunity to object to the tendering of the cautioned statement of the 1st appellant is untrue and it need not detain us. We say so because in the light of what appears at page 61 of the record of appeal, when PW3 prayed to tender the cautioned statement, the learned defence counsel was invited and he raised an objection on a point of law that the statement was in contravention of section 10 (3) of the Criminal Procedure Act [ CAP 20 RE. 2002] and the trial court made a Ruling. The 1st appellant did not repudiate the statement and we agree with the learned State Attorney that, the cautioned statement was properly admitted at the trial. The follow up question is whether or not the 1st appellant's statement incriminated the 2nd appellant. The statement is reflective of the following from page 115 to 118 of the record of appeal as follows:

> *"...mwaka 2012 ndipo nilijiunga na kundi la majambazi na washirika wangu ni KAOYA...Tarehe 18/12/2012 majira ya saa o7.30 hrs ndipo nilipokea simu yenye namba 0717 013313 na kunieleza niende Tabata Kinyerezi na kuwakuta watu watatu ambao ni KAOYA na JEL au FRANK au AUGUSTINO na mtu mwingine ambaye ilikuwa ni siku yangu ya kwanza kumuona...Hivyo tulianza safari mpaka kariakoo katika mtaa wa mahiwa na akanielekeza kuwa niegeshe gari*

*kwa pembeni ya barabara...waliniambia kuwa tunasubiri gari ambayo itatoka kwenye duka la matairi na itakuwa na pesa tuifuate na kumyanganya pesa ambazo zitakuwa kwenye gari hilo. Muda wa saa 10.30 hrs ulipofika ndipo gari hilo corona rangi nyeupe ilitoka hapo dukani na ndipo JEL au AUGUSTINO au FRANK waliifuata hiyo gari ambayo ilikuwa na watu wawili ambayo ni dreva na abiria wake. Gari hiyo ilikuwa inatembea taratibu ndipo walianza kuisimamisha hao wenzangu na gari haikusimama ndipo JEL au AUGUSTINO au FRANK na KAOYA walitoa bunduki zao na kuanza kuwashambulia watu waliokuwa kwenye gari na gari ilisimama na ndipo JEL au AUGUSTINO au FRANK na KAOYA na huyo mtu mwingine walifungua buti ya gari hilo na kutoa begi leusi name ndipo nilipowasha pikipiki na kuwafuata nao walipanda piki na haop tulikuwa mtaa wa livingstone na tulianza safari na Bagi alikuwa amelishika huyo mtu mwingine ambaye simufahamu kwa jina na JEL au AUGUSTINO au FRANK alikuwa ameshika silaha pistol na akawa anafyatua risasi ovyo..."*

In a nutshell, apart from the 1st appellant stating to have known the 2nd appellant, he did not narrate on the 2nd appellant's involvement in the robbery incident which culminated to the killing of the deceased persons. Although the 1st appellant in the cautioned statement mentioned those

involved in the commission of the crime to be Kaoya among others, as earlier intimated, it is surprising that the prosecution withdrew charges against the said Kaoya during the committal stage. This leaves a lot to be desired.

We have also gathered that, the trial magistrate convicted the 2nd appellant relying on the oral account of PW2 who testified that the 2nd appellant had confessed to have been involved in the crime and that he mentioned the 1st appellant which led to incriminating evidence as viewed by the trial magistrate. In our considered view, such finding is wanting because as earlier stated in the cautioned statement, the 1st appellant did not incriminate the 2nd appellant in the fateful incident. Moreover, since according to PW2 the appellants upon being interrogated they confessed to have committed the offence in the cautioned statements, why was the 2nd appellant's statement not adduced in the evidence. This was a material document as it would have cleared doubts or rather corroborate PW2's account on the alleged 2nd appellant's confession. Thus, failure to exhibit the 2nd appellant's cautioned statement leaves a lot to be desired and we have no option but to draw an inference adverse to the prosecution to the effect that the statement in question, if produced could have controverted

the prosecution case. This as well, befalls the motor cycle which is alleged to have been involved at the robbery incident and entrusted to the police according to PW2's account. The said motor cycle could have martialled proof that it belonged to the 1st appellant and failure to tender it in the evidence taints the prosecution case with a serious doubt.

The next issue for our consideration is whether there is sufficient evidence to connect the 1st appellant with the charged offence of murder. It is on record that; the autopsy reports were exhibited in the evidence at the stage of preliminary hearing. However, they were not read out to the appellants which is irregular as the appellants were denied opportunity to know the contents of those reports and we accordingly expunge them from the record. Having expunged the autopsy reports, the follow up question is whether or not there is sufficient material to establish the fact of death of the deceased and if it implicates the 1st appellant with the death. We are aware that, death can be proved by evidence other than the autopsy report. The Court was confronted with a similar scenario whereby the autopsy report was expunged in the case of **ELIAS MTATI @ IBICHI VS REPUBLIC,** Criminal Appeal No. 65 of 2014 (unreported) and said as follows:

*"We need not detain ourselves on the issue respecting proof of the fact of death, much as, we think there are sufficient pointers on the evidence to establish beyond doubt that Roda Mihambi @ Pima is, indeed, dead. More particularly, PW1 testified that after the attack on her, the deceased fell to the ground and did not rise. The witness knew the deceased quite well as a fellow villager and in her testimony she categorically stated that Roda is presently dead. The other witness is WP 3625 detective corporal Mary (PW3), the investigation officer. In her account, she found Roda lying dead on a table at Bwawani dispensary where she was taken after the attack. From the evidence of the two witnesses, it is beyond question that Roda is, indeed, dead."*

Unfortunately, the position is different in the case at hand because: **One,** the Doctor who conducted the autopsy was not paraded as a prosecution witness to testify on the cause of death of the deceased persons. **Two,** none of the prosecution witnesses testified to have identified the deceased persons. **Three,** the complainant and owner of a tyre shop Mire Artan Ismail, whose driver is alleged to have been shot and killed while taking money to the bank was not paraded as a witness to establish such fact. **Four,** also one Yusuf Mire who was injured when he was together with the driver who was killed in the ambushed motor

vehicle was not paraded as a prosecution witness. The said persons were material witnesses who could have clarified to the trial court on the identity of the deceased persons and if they were killed at the robbery incident which occurred on 18/12/2012. That apart, as some of those persons were listed as prosecution witnesses during committal proceedings were material witnesses, no explanation was availed by the prosecution if they could not be found. Failure to parade them entitles this Court to draw an inference adverse to the prosecution as we said in the case of **AZIZ ABDALLA VS REPUBLIC** [1991] TLR 71 that:

> *"the general and well known rules are that the prosecutor is under a prima facie duty to call those witnesses who, from their connection with the transaction in question, are able to testify on material facts. If such witnesses are within reach but are not called without sufficient reason being shown, the court may draw an inference adverse to the prosecution.*

In view of what we have endeavoured to discuss, in the evidence taken as a whole there is no nexus on the death of deceased persons with the murder incident and as such, there is no compulsive inference connecting the 1st appellant with the killing incident. This is what made us to re-evaluate the whole of the trial evidence.

All said and done, we are constrained to hold that although the killing incident took place at Kariakoo area, it was not proved that the appellants were involved in the killing incident of the deceased. We accordingly allow the appeal. The conviction of the appellants and consequential sentence are hereby quashed and set aside. We order the immediate release of the appellants from prison unless they are otherwise lawfully held.

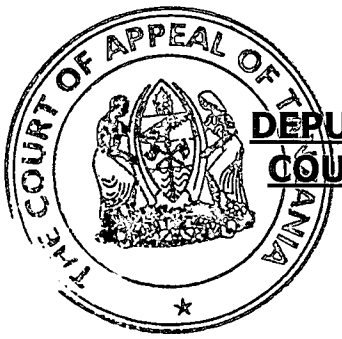
**DATED** at **DAR-ES-SALAAM** 7th day of May, 2020.

S. E. MUGASHA
**JUSTICE OF APPEAL**

G. A. M. NDIKA
**JUSTICE OF APPEAL**

I.P. KITUSI
**JUSTICE OF APPEAL**

The Judgment delivered this 8th day of May, 2020 in the presence of the 1st and 2nd appellants in person- linked via video conference and Mr. Candid Nasua, learned State Attorney for the respondent/ Republic is hereby certified as a true copy of the original.




B. A. Mpepo
**DEPUTY REGISTRAR**
**COURT OF APPEAL**