**IN THE COURT OF APPEAL OF TANZANIA**

**AT TABORA**

**(CORAM: LILA, J.A., LEVIRA, J.A. And MWAMPASHI, J.A.)**

**CRIMINAL APPEAL NO. 378 OF 2017**

**ABUBAKARI MSAFIRI ..... APPELLANT**

**VERSUS**

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

**(Appeal from the decision of the High Court of Tanzania, at Tabora)**

**(Mallaba, J.)**

**dated the 11th day of August, 2017**

**in**

**Criminal Appeal No. 41 of 2017**

.....

# JUDGMENT OF THE COURT

20th & 28th October, 2021

## MWAMPASHI, J.A.:

In the District Court of Kigoma at Kigoma (the trial court), the appellant Abubakari s/o Msafiri stood charged with the offence of attempted rape shown in the statement of the offence to be contrary to sections 131 (1) and 132 (1) both of the Penal Code, [Cap. 16 R.E. 2002] (the Penal Code). The particulars of the offence as per the charge sheet were that on 07.12.2011 at about 10.00 hrs at Sunuka village within the District and Region of Kigoma, the appellant attempted to rape PW1, a 15 years old girl (name withheld).

The appellant denied the charge, thus, to prove the case against him, the prosecution called three witnesses namely, the victim who testified as PW1, the victim's cousin, Salma Subira (PW2) and Ally Mohamed, the militia man who testified as PW3. The appellant was a sole witness for the defence.

According to PW1, on 07.12. 2011 at about 10.00 hrs, she, with her three cousins namely Shella, Maku and Salima Subira (PW2), were on their way home from Karago market when they decided to take a bath in lake Tanganyika. After taking the bath while proceeding home, they met the appellant who asked them why they have taken bath in the lake. The appellant who had a stick in his hands threatened that he would punish and take them to the hamlet chairman. He then directed PW1's cousins to go home and fetch their father who would be required to pay Tshs 200,000/= as fine but the girls refused. As the appellant kept on threatening the girls, PW1 agreed to be taken to the hamlet chairman while the other girls headed home. On the way to the hamlet chairman, the appellant demanded to have sexual intercourse with PW1. He then grabbed her and took her into bushes, slapped her, lied her down, took off his clothes and PW1's underpants, produced his penis and when was about to accomplish his mission PW1 managed to run away after pinching the appellant's penis. From the scene, PW1 while half-naked ran to a

nearby house where a certain old woman gave her clothes to cover herself. Thereafter, came a man who took her to the hamlet chairman where two militia men were summoned and ordered to go to the town with PW1 to search for the appellant. PW1 led the militia men first to a football ground and then to barabara ya 5 street where the appellant was found and arrested.

The evidence from PW2 was to the effect that when PW1 was being taken to the hamlet chairman and after the appellant had asked her with the other two girls to go home and bring PW1's parents, they got home but the parents were not at home. Thereafter, PW2 and those other two girls decided to go at the hamlet chairman. On their way, before getting at the hamlet Chairman, they were informed by a certain old woman that PW1 was about to be raped. When they got at the hamlet chairman, they found PW1 who was in different clothes. She finally told the trial court that they then accompanied PW1 and the militia men to barabara ya 5 street where the appellant was arrested.

In his evidence, Ally Mohamed (PW3) testified that he is a militia man at Karago and that on the material day at about 14.00 hrs he firstly met PW1 who was running while half naked. Sometimes later he was summoned by the hamlet chairman and when he got there he found PW1 with other two girls. The chairman directed him to look for the suspect.

PW3 therefore left with PW1 and the two girls and managed to find and arrest the appellant at barabara ya 5 street.

In his defence the appellant told the trial court that PW1 was his girlfriend and that on the material day he met her together with her two younger sisters. PW1 asked and demanded that they should make love and thus she asked her younger sisters to leave. Thereafter she took him to a secluded place. He denied to have taken out PW1's underpants.

After a full trial, the trial court found that the case against the appellant had been proved beyond reasonable doubt. The appellant was therefore convicted and sentenced to 30 years imprisonment. His first appeal to the High Court was unsuccessful hence this second appeal.

At the hearing of the appeal, the appellant was represented by Ms. Stella Thomas Nyakyi, learned advocate whereas the respondent Republic was represented by Mr. Deusdedit Rwegira, learned Senior State Attorney.

Ms. Nyakyi began by abandoning eight grounds of appeal contained in two memoranda of appeal which the appellant had earlier filed on 21.11.2017 and 16.09.2020. She retained the supplementary memorandum of appeal she had filed on 12.10.2021 in which there were four grounds of appeal in the following form:

1. *That, the first appellate court improperly upheld the trial Court decision basing on the finding of trial magistrate which does not show that the learned magistrate complied with the mandatory provision of the law with the result that the evidence of PW1 was wrongly admitted and acted upon.*
2. *That, the first appellate court improperly upheld the trial court's decision basing on improper conviction.*
3. *That, the first appellate court improperly upheld the trial court's decision as the basis of conviction was based on defective charge.*
4. *That, the first appellate court improperly upheld the trial court's decision as the Prosecution failed to prove the case beyond reasonable doubt.*

In her submission in support of the appeal, Ms. Nyakyi began with the third ground of appeal arguing that the charge sheet was fatally defective, **first,** for citing in the statement of the offence wrong and inapplicable provisions of law and **second,** for the failure to disclose the essential ingredients of the offence in the particulars of the offence. As on the first limb of the complaint, it was argued by Ms. Nyakyi that section 131 (1) of the Penal Code which provides for the punishment of rape was inapplicable and ought not to have been cited. She further argued that even section 132 (1) which was also cited, merely provides for punishment of attempted rape. She insisted that section 132 (1) and (2) (a) of the Penal Code is that which ought to have been cited. To buttress his argument that the charge was fatally defective, Ms. Nyakyi referred us to

the case of **Isidori Patrice v Republic**, Criminal Appeal No. 224 of 2007 (unreported).

As on the second limb of the third ground of appeal, it was submitted by Ms. Nyakyi that the particulars of the charge omitted to include essential ingredients of the offence of attempted rape which are provided under section 132 (2) (a) of the Penal Code. She explained that the particulars omitted to include the words "*with intent to procure prohibited sexual intercourse*" and "*threatening*".

Ms. Nyakyi concluded on the third ground of appeal by arguing that the defects were fatal as the appellant was denied his right of being informed of the nature and seriousness of the offence he was charged with. Upon being probed by the Court as to whether the defects were not curable, Ms Nyakyi firstly agreed that the evidence given by the prosecution, particularly that of PW1, sufficiently enabled the appellant to know the nature of the offence he was charged with and therefore that the defects were curable. Short while, however, she stuck to her guns arguing that under the circumstances of this case where the charge sheet did not only omit to cite correct and proper provisions of law in the statement of the offence but where the particulars of the offence were also insufficient, the charge was fatally defective and not curable.

With regard to the first ground of appeal, it was argued by Ms. Nyakyi that the evidence given by PW1 was wrongly admitted and acted upon by the trial court because *voire dire* test was not conducted on PW1. She explained that while in its judgment the trial court put it that before PW1 testified *voire dire* test was conducted on her, it is clear on page 7 of the record that no such test was conducted. Ms. Nyakyi was therefore of the view that the failure to conduct the test on PW1 rendered her evidence liable to be expunged and she prayed for the evidence to be so expunged.

As on the second ground of appeal it was Ms. Nyakyi's argument that the appellant was not properly convicted and sentenced. She contended that the appellant was wrongly convicted under section 235 of the Criminal Procedure Act, Cap 20 R.E. 2002 (the CPA). She also argued that the trial magistrate did not cite the provision of law under which the appellant was sentenced contrary to the requirement of section 312 (2) of the CPA.

Lastly, on the fourth ground of appeal it was submitted by Ms. Nyakyi that the case against the appellant was not proved to the required standard. She argued that the evidence given by PW1 and PW2 is in contradiction in respect of whether the other girls who were with PW1, remained with PW1 all the time or not. It was explained by her that while

according to PW2, she and the other two girls left leaving PW1 and the appellant alone, the evidence from PW1 is not to that effect. To Ms. Nyakyi, the contradiction was material and ought to have been applied to the appellant's benefit. She further contended that apart from the fact that PW1's evidence was in contradiction with that of PW2, PW1's credibility and reliability is questionable because she appeared to had concealed some material facts such as the fact that she and the appellant knew each other before the material day. It was therefore prayed by Ms. Nyakyi that the appeal be allowed.

Mr. Rwegira began by intimating that the Republic was opposing the appeal. As on the third ground of appeal while it was conceded by him that the charge was defective for wrong and improper citation of the law in the statement of the offence and for insufficient particulars of the charge, it was however argued by him that the defect is not fatal and that the same is curable. He contended that the insufficiency of the particulars is cured by the evidence from PW1 appearing on page 8 of the record. Mr. Rwegira did also refer the Court to page 17 of the record where the appellant is on record acknowledging that he was charged with the offence of attempted rape. This, it was argued by Mr. Rwegira, shows that the appellant knew and was well informed of the nature of the offence he was charged with. To cement his argument that the charge is not fatally

defective and that it is curable, he referred the Court to the case of **Jamali Ally @ Salum v. Republic,** Criminal Appeal No. 52 of 2017 (unreported).

With regard to the complaint on the first ground it was submitted by Mr. Rwegira that the remark in the trial court judgment that the *voire dire* test was conducted on PW1 was inconsequential. He argued that since PW1 was 15 years old, *voire dire* test on her was not required. It was further argued that according to the record, the test was not conducted. He insisted that PW1 was properly affirmed before she testified and the validity of her testimony cannot be questioned.

Turning to the 2nd ground of appeal it was argued by Mr. Rwegira that the conviction was properly entered and that the omission to cite section 132 (2) (a) of the Penal Act did not vitiate the judgment. It was also contended that the failure to cite the section providing the punishment when imposing the sentence was also not fatal since section 312 of the CPA does not mandatorily require so. He insisted that the omissions did not prejudice the appellant.

As on the last ground of appeal it was Mr. Rwegira's response that there was no material contradiction between the evidence of PW1 and PW2. He argued that the fact that at some point before the commission of the attempted rape PW1 and the appellant were left alone, was also supported by the appellant in his defence. It was argued by him that the

evidence from PW1 that the offence was committed against her was supported by the evidence from PW3 which is to the effect that he (PW3) met PW1 running from the scene while half-naked. He finally submitted that the case against the appellant was proved to the hilt and therefore that the appeal should be dismissed.

In her brief rejoinder, Ms. Nyakyi insisted that the case against the appellant was not proved to the required standard. She argued that PW3 was not a reliable witness because it is implausible that he met and saw PW1 in a blouse while according to PW1 the blouse was one of the clothes that were abandoned by her at the scene.

The foregoing was what was argued for and against the appeal. The general issue before us is whether the appeal is meritorious or not. In determining the appeal, we propose to begin with the third ground of appeal which is on the propriety, correctness or otherwise of the charge preferred against the appellant. At the outset, it should be restated that it is settled that a charge being an important aspect of the trial should always enable the accused to understand the nature and seriousness of the case against him. It is therefore important that in every charge the law and the section of the law against which the offence is said to have been committed must be mentioned and stated clearly. The charge must tell the accused precisely and concisely as possible the offence and the

matters in which he stands charged – see **Joseph Paul @ Miwela v Republic**, Criminal Appeal No. 379 of 2016 (unreported).

In the instant case, the charge sheet that was laid before the trial court against the appellant contained the statement and particulars of offence in the following form:

> ***STATEMENT OF OFFENCE****: ATTEMPTED RAPE S/C 132 (1) AND 131 (1) OF THE PENAL CODE CAPE 16 OF THE LAWS REVISED EDITION 2002.*
>
> ***PARTICULARS OF OFFENCE****: That* ***ABUBAKARI S/O MSAFIRI*** *is charged on 7th day of December 2011 at about 10:00hrs at SUNUKA Village within the District and Region of Kigoma did attempt to rape one (name withheld) a girl of 15 yrs old.*

It is clear from the above quoted part of the charge, as it was also conceded by Mr. Rwegira for the respondent, that the charge was defective not only for wrong and non-citation of the relevant provisions of law in the statement of the offence but also for the insufficiency of the particular of the charge. The appropriate charge against the appellant ought to have been laid under section 132 (1) and (2)(a) of the Penal Code. Section 131 (1) was wrongly and was cited out of place. Further,

since the offence of attempted rape is statutorily defined and as its essential ingredients are spelt out, then the particulars of the offence ought to have alleged the specific ingredients, that is, "*an intent to procure prohibited sexual intercourse*" and the aspect of the victim having been "*threatened*" by the appellant.

It is also our observation that basing on the arguments of the two counsel for the parties in regard to the first ground of appeal, the issue for our determination is whether the defects of the charge rendered the charge fatally defective and not curable. In arguing that the charge was fatally defective and not curable, Ms. Nyakyi relied on the case of **Isidori Patrice** (supra). On his part, Mr. Rwegira placed reliance on the decision of the Court in **Jamali Ally @Salum** (supra) and argued that the defect was curable.

On our part, having considered the circumstances of this case, we agree with Mr. Rwegira that basing on the position the Court took in **Jamali Ally @ Salum** (supra) the charge is curable. In determining whether a charge is fatally defective or otherwise the test is whether from the statement of the offence and the particular of the offence the accused is able to fully understand the nature and seriousness of the offence he stands charged or not. Where a charge omits to cite relevant provisions of law in the statement of offence or where particulars of the offence omit

some essential ingredients, such defect will be curable if from the evidence on record the accused is sufficiently informed of the nature and seriousness of the charge he faces. In ***Jamali Ally @ Salum*** (supra) where the Court was confronted with an akin problem, it was held, among other things, that:

> *"It is our finding that the particulars of the offence of rape facing the appellant, together with the evidence of the victim (PW1) enabled him to appreciate the seriousness of the offence facing him and eliminated all possible prejudices. hence, we are prepared to conclude that the irregularities over non-citations and citations of inapplicable provisions in the statement of the offence are curable under section 388 (1) of the CPA."*

In the instant case, PW1 is on record testifying before the trial court that with intent to procure sexual intercourse, the appellant who had a stick threatened her and took her into the bush. Further, at page 17 of the record, the appellant is also on record telling the trial court that he was being accused of attempting to rape PW1. From the above, it is therefore our finding that the appellant was well informed and appreciated the nature and seriousness of the offence he was charged with. The defects in the charge did not prejudice the appellant and are curable

under section 388 (1) of the CPA. The third ground of appeal therefore fails.

The first ground of appeal should not detain us. As rightly argued by Mr. Rwegira the remark in the trial court judgment that the *voire dire* test was conducted on PW1 was just inconsequential. The record does not show that the test was conducted on PW1. After all, since PW1 was 15 years old and therefore not a child of tender age, then no *voire dire* test needed to be conducted on her before her evidence could be taken. A child of tender age as per section 127 (4) of the Evidence Act, [Cap 6 R.E. 2002] (the Evidence Act) and to whom *voire dire* test is mandatorily required, is a child whose apparent age is not more than fourteen years. PW1 was not a child of tender age and her evidence which was taken on affirmation was therefore properly taken and cannot be expunged as argued by Ms. Nyakyi.

Regarding the second ground of appeal, it is true that in convicting the appellant, though it was stated that the appellant was being convicted as charged, the trial magistrate cited section 235 of the CPA instead of section 132 (1) of the Penal Code. It is also evident that in sentencing the appellant to thirty years imprisonment, section 132 (1) of the Penal Code was not cited. That being the case therefore, the only issue here is whether the above stated ailments are incurable to the extent that the

appellant was prejudiced. On this, we agree with Mr. Rwegira that the ailments are curable and did not prejudice the appellant or occasion any failure of justice. Reasons for so holding are as given hereunder.

First and foremost, we are aware of section 312 (2) of the CPA under which it is provided that in case of conviction, the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused is convicted and the punishment to which he is sentenced. In the instant case, though there were some ailments in conviction and sentencing the appellant, as we have alluded to above, still we find that where it was stated by the trial court that the appellant was convicted as charged and also where the proper and lawful sentence was passed, then the ailments cannot be fatal or not curable. In the instant case there was no total failure to convict or sentence the appellant. The ailments could therefore not vitiate the judgment. In the case **of Emmanuel s/o Phabian v. Republic,** Criminal Appeal No. 259 of 2017 (unreported) the Court was confronted with a similar complaint where the trial magistrate convicted the accused as charged without citing the section of the Penal Code under which the accused was being convicted. It was held, among other things, that:

> *"In his judgment, the learned trial Resident Magistrate convicted the appellant as charged*

*meaning that he was convicted of the offence of rape under ss. 130 (2) and 131 of the Penal Code which the trial magistrate specified at the beginning of the judgment. Thus, the fact that the offence and the section of the law were not restated did not amount to non-compliance with s. 312 (2) of the CPA - See for instance, the case of* ***Hassan Said Twallb v. Republic****, Criminal Appeal No. 95 of 2019 (unreported). As found above, although there was omission to cite paragraph (a) of s. 130 (2) of the Penal Code, that did not vitiate the conviction."*

Being guided by the above position, we also find that the omission to cite proper provisions of law was not fatal and thus this ground fails as well.

Let us now turn to the last and general ground which is on the complaint that the case against the appellant was not proved beyond reasonable doubt. First of all, we have noted that the two lower courts concurrently found it established from the evidence given by PW1 and PW3 that with intent to procure sexual intercourse from PW1, the appellant threatened her. The courts also found that the appellant was about to rape PW1 before she managed to run away from him while half-naked after pinching the appellant's penis. We are also aware of the

principle that, this being a second appeal, the concurrent findings of facts by the two lower courts, can rarely be interfered with unless the decision is clearly wrong, unreasonable or where there is a misdirection, non-direction or misapprehension of the nature, substance and quality of evidence on record. In the case of **Wankuru Mwita v. Republic**, Criminal Appeal No. 219 of 2012 (unreported) the principle was restated by the Court thus:

> *"The law is well settled that on second appeal, the Court will not readily disturb concurrent findings of facts by the trial court and first appellate court unless it can be shown that there are perverse, demonstrably wrong or clearly unreasonable or are a result of a complete misapprehension of the substance, nature or no-direction on the evidence; a violation of some principle of law or procedure or have occasioned a miscarriage of justice."*

Further, in the case of **Salum Mhando v. Republic** [1993] T.L.R. 170 the Court stated that:

> *"where there are mis-directions and non-directions on the evidence a Court of second appeal is entitled to look at the relevant evidence and make its own findings of fact."*

See also **DPP v Jaffari Mfaume Kawawa** [1981] T.L.R. 149, **Mussa Mwaikunda v Republic** [2006] T.L.R. 387 and **Salumu Mussa v Republic**, Criminal Appeal No.1 of 2011 (unreported).

In determining the last ground of appeal, we will therefore be guided by the above settled principle.

Ms. Nyakyi's argument in substantiating the ground that the case against the appellant was not proved to the hilt, was that PW1 and PW2 gave contradictory evidence in regard to the fact whether the other girls who were with PW1, left leaving PW1 and the appellant behind alone or not. On this, it is our finding that there was no such contradiction. As correctly argued by Mr. Rwegira, the evidence is clear that at the time PW1 and the appellant were heading into the bush, PW2 and the two other girls had left for home where they had to fetch PW1's parents. While PW2 was clear on that fact, PW1's evidence is also to the effect that when heading into the bush, the two were alone. There was therefore no contradiction between the evidence given by PW1 and PW2.

Turning back to the issue whether the case against the appellant was proved to the hilt or not, we find it established from the evidence on record that the appellant met PW1 who was with PW2 and two other girls. Established is also the fact that PW2 and the other two girls were directed to leave for home leaving the appellant with PW1 behind. It is also evident

that after being left alone, the appellant and PW1 heeded into the bush where they intended to have sexual intercourse. We find this established not only from PW1's evidence but also from the appellant's own defence evidence. In his evidence the appellant is on record testifying that he and PW1 were friends and that on the material day he met PW1 who was with her two sisters who were asked by PW1 to leave. He further told the trial court that after PW1's young sisters had left, PW1 asked and demanded that they should have sexual intercourse and that is when they headed into the bush. It was therefore established that the two got into the bush intending to have sexual intercourse. What is in dispute, however, is on what happened after the two got into the bush. Is there good evidence supporting the prosecution claim that the appellant attempted to rape PW1? Did the appellant lay PW1 down by force, put off her underpants, produce his penis ready to penetrate PW1 before she managed to run away half-naked?

The answers to the above posed questions require examination of the credibility and reliability of the prosecution witnesses, particularly that of PW1 and PW3. Being alive of the principle that credibility of witnesses by demeanour is in the domain of trial courts, we are also aware, as we have pointed out earlier, that this Court is entitled, where appropriate, to look at the evidence on record and make its own findings of facts. Basing

on that principle we have examined the evidence on record particularly in regard to the evidence on what happened after the appellant and PW1 had gotten in the bush, and found that the courts below misapprehended the substance and weight of the relevant evidence from PW1 and PW3.

Simply stated the offence of attempted rape is committed when a person's intention to commit the offence of rape is frustrated before he commits it fully-see **Joseph Paul @ Alex Makua v. Republic**, Criminal Appeal No. 342 of 2019 (unreported). Further, one of the essential ingredients of the offence of attempted rape and which the prosecution has a duty to prove beyond reasonable doubt is an intent to procure prohibited sexual intercourse. The intent is in most cases manifested by some actions preceding sexual intercourses.

In the instant case, an attempt to prove the intent to procure prohibited sexual intercourse came from the evidence given by PW1 which was to the effect that after being taken into the bush, the appellant slapped her twice, laid her down, put off her underwear and produced his penis ready to penetrate her before she managed to run away half naked after pinching the appellant's penis. The question that has taxed our mind is whether, bearing in mind that the claims by PW1 were disputed by the appellant, the two lower courts rightly found the claims true. Was the evidence by PW1 to that effect reliable?

Basing on our observation after examining the evidence on record the answer to the above posed question is in the negative. First of all, in her evidence, PW1 claimed that from the scene she ran while half-naked to the house of a certain old woman who gave her clothes to cover herself. This story was found by the two lower courts to have support of PW3's evidence. In his evidence PW3 claimed that before the hamlet chairman summoned and directed him to accompany PW1 to go and look for the appellant, he had earlier met PW1 running from the scene half-naked. We think this is where the two lower courts misapprehended the substance and the weight of the evidence from these two witnesses. While PW3 claims that he met PW1 running from the scene half-naked, in her evidence, PW1 did not state that when running away from the scene and before getting at the house of the old woman, she met anyone on the way. It is also implausible that PW1 who was running from the danger of being raped by the appellant could have met and passed PW3 without seeking for help from him. It should be borne in mind that there is no evidence that PW1 knew that the old woman's house was somewhere close. What we get from these two witnesses in that respect is that either of the two did not tell the truth. In effect this erodes the credibility and reliability of the said two witnesses.

We also agree with Ms. Nyakyi that from the totality of the evidence on record, the possibility that PW1 knew the appellant well before and therefore that for reasons better known to herself she concealed that fact, cannot be ruled out. While the appellant maintained that the two knew each other well because they were friends and also that he even knew PW1's parents, on her part PW1 acted as if the appellant was a total stranger to her. If PW1 did not know the appellant, we wonder how she managed to lead PW3 firstly to the football ground and then to Barabara ya 5 street where the appellant was found. It should also be noted that PW1 did not give the description of the appellant to anyone before she led PW3 to where the appellant was found. The possibility that PW1 concealed the fact that she knew the appellant before, cast some reasonable doubts on her credibility and reliability.

The doubt on PW1's credibility and reliability on her claims that the appellant stripped off her clothes and that he laid her down ready to rape her and also that she ran to the old woman half-naked, is heightened by the fact that the old woman to whom PW1 allege she took refuge and from whom she was given the clothes to cover herself, was not called as a witness. While we are mindful of the fact that under section 143 of the Evidence Act, Cap 6 R.E. 2019 no particular number of witnesses is required for proof of any fact, it is however, our considered view that in

the circumstances of this case, the said old woman was a material witness the prosecution ought to have called as a witness. The old woman would have lent credence to PW1's shaky claims that she ran away half-naked from the scene where the appellant had allegedly attempted to rape her. As no explanation was given why the old woman whose residence was known was not called as a witness then this is a fit case for us to draw adverse inference against the prosecution that PW1 never escaped from the appellant's hands in the bush while half-naked. In the case of **Aziz Abdalla v. Republic** [1991] T.L.R. 71 the Court observed as follow:

> *"The general and well known rules is that the Prosecution 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."*

For the reasons stated above we find the last ground of appeal meritorious. The charge against the appellant was not proved to the required standard. Consequently, we allow the appeal, quash the conviction and set aside the sentence meted out to the appellant. We also

order that the appellant be set at liberty forthwith unless he is otherwise lawfully held.

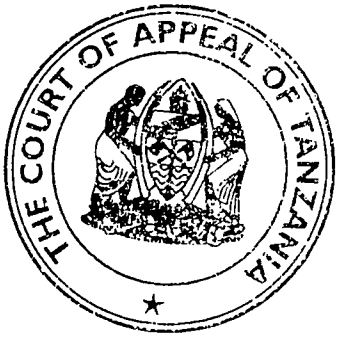
**DATED** at **TABORA** this 27th day of October, 2021.

S. A. LILA
**JUSTICE OF APPEAL**

M. C. LEVIRA
**JUSTICE OF APPEAL**

A. M. MWAMPASHI
**JUSTICE OF APPEAL**

The Judgment delivered this 28th day of October, 2021 in the presence of Ms. Stella Thomas Nyakyi, counsel for the Appellant and Mr. Deusdedit Rwegira, learned Senior State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.




D. R. LYIMO
**DEPUTY REGISTRAR**
**COURT OF APPEAL**