IN THE COURT OF APPEAL OF TANZANIA

AT MUSOMA

(CORAM: NDIKA, J.A., KOROSSO, J.A. And MAKUNGU, J.A.)

CRIMINAL APPEAL NO. 138 OF 2020

1. **SAMWELI JACKSON SAABAI @MNG'AWI ..... 1ST APPELLANT**
2. **MARWA MNIKO MUNGE .....2ND APPELLANT**
3. **MAHINDI MWIKWABE KORONGO ..... 3RD APPELLANT**

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from Judgment of the High Court of Tanzania at Musoma)

(Galeba, J.)

dated the 9th day of March, 2020
in
Criminal Sessions Case No. 32 of 2019

.....

JUDGMENT OF THE COURT

3rd & 14th June, 2022

KOROSSO, J.A.:

Samweli Jackson Sabai @Mng'awi, Marwa Mniko Munge and Mahindi Mwikwabe Korongo, the 1st, 2nd and 3rd appellants respectively along with three others who are not subject of this appeal, were charged with the offence of Attempted Murder, contrary to section 211(a) of the Penal Code, Cap 16 R.E 2002, now 2019 (the Penal Code). The particulars of the offence stated that the appellants and 3 others on 12/07/2018 at

Kyoruba village within Tarime District, Mara Region, unlawfully attempted to cause the death of one Mosi Munanka.

The factual setting of the case founding the instant appeal is that on 12/07/2018 at around 8.00 hours, Mosi Mnanka Mniko (PW1) was working on his farm located at Kyoruba Village when about six people armed with machetes, bows and arrows led by the 2nd appellant ambushed and surrounded PW1. The 2nd appellant told his colleagues that as agreed in their meeting no person from Kyoruba was allowed to work on the farm. Then, the 1st and 3rd appellants used a machete to cut PW1 on the right side and middle of his head and he fell down. The other invaders continued to beat him, and in the course of it the 1st appellant threatened to cut the PW1's head off with a machete. To protect himself, PW1 covered his head with his right arm which was then cut in the process. Soon after, PW1 heard the 3rd appellant bragging that they have finished him and that they should leave, and then, PW1 lost consciousness. About 15 minutes later, PW1 heard voices which he recognized to belong to Zabron Nyamaga (PW2) and Jackson Marunguli from Kyoruba village, and called Zabron, who came. On seeing PW1 condition and injuries, PW2 raised an alarm calling for assistance. Mr. Lameck Jackson Marunguli and Stephen Charo responded to the alarm and carried PW1 to a health centre in Kyoruba and later to Sirari Police

Station, where he was provided with a PF3 to facilitate his medical examination and treatment.

In defence, all three appellants raised the defence of *alibi*. The 1st appellant (1st accused then) denied allegations of participating in cutting and beating PW1 stating that on 12/07/2018 as a bodaboda rider he took a passenger, one Buhuru Getorka to Sirari and he was arrested on 15/07/2018 at Sirari centre. The 2nd appellant (3rd accused then), a peasant and Village Chairman denied the allegations, stating that on the 12/07/2018 he had traveled to Mwanza to resolve a land dispute between Kebweye and Kyoruba villages and that he met with the Deputy Minister for Lands, Housing, and Human Settlements and stayed there until 15/07/2018. He tendered two bus tickets which were collectively admitted into evidence as exhibit D to substantiate his assertions. On the part of the 3rd appellant (4th accused then), he also distanced himself from the offence charged, stating that he is a peasant and on 12/7/2018 around 08.00 hours he was at the Magoto Hospital up to 13/7/2018 taking care of his child who was admitted there. He was arrested on 8/9/2019.

The trial proceeded with each side adducing evidence to support their cases. Upon a full trial, the 1st and 3rd appellants were convicted and sentenced to serve ten years imprisonment while the 2nd appellant who

was also convicted, was sentenced to serve five years imprisonment. Dissatisfied with the decision, all the appellants have filed an appeal to this Court in a joint memorandum of appeal premised on four grounds which address the following complaints: **One**, faults the learned trial judge for failure to explain to assessors their roles and responsibilities. **Two**, faulted the trial court for failure to consider the appellants' defence. **Third**, faults the trial court for imposing variant custodial sentences to the appellants in sentencing the 1st and 3rd appellants to 10 years and five years to the 2nd appellant, and **four**, faults the trial court for determining that the respondent proved its case beyond a reasonable doubt.

On the day the appeal was called for hearing on 3/6/2022, the appellants enjoyed the services of Mr. Edison Philipo, learned counsel whereas, Mr. Frank Nchanila and Mr. Isihaka Ibrahim, both learned State Attorneys entered appearance for the respondent Republic.

Mr. Philipo prefaced his elaboration of the grounds of appeal by first adopting the grounds found in the memorandum of appeal lodged on 1/6/2022 and then proceeded to expound on the 1st ground of appeal. He faulted the trial Judge for failing to enlighten the assessors on their role and duties in the trial and thus contravening section 265 of the Criminal Procedure Act, Cap 20 R.E 2002, now 2019 (the CPA). He also challenged

the fact that the ages of the assessors were not recorded and thus there was a lack of clarity on whether their appointment complied with the law. He cited the case of **Abdul Ibrahim @Masawe Vs Republic**, Criminal Appeal No. 319 of 2017, and **Hilda Innocent Vs Republic**, Criminal Appeal No. 181 of 2017 (both unreported) to reinforce his contention. He contended that the irregularities were fatal and not curable under section 388 of the CPA. He thus urged the Court to nullify the proceedings and order a retrial.

In response, Mr. Ibrahim commenced stating the position of the respondent Republic that the appeal was resisted and that the conviction and sentence meted to the appellants were supported. He argued that the appellant's counsel assertions in the 1st ground of appeal are misconceived since section 265 of the CPA does not impose a duty on the court to explain to the assessors, their duties in a trial once selected. The learned State Attorney conceded to the fact that upon appointing the assessors the trial judge failed to explain to them their duties in the trial. He, however, departed from the learned counsel for the appellants on the remedy for the said anomaly, arguing that no injustice was occasioned to the appellants since the assessors were present throughout the trial, managed to put questions to witnesses for the prosecution and defence, and gave their verdict at the end when invited to do so. He contended

that all relevant procedure for their participation was complied with and thus the irregularity was curable under section 388 of the CPA. The learned State Attorney urged us to find the cases cited by the learned counsel for the appellants distinguishable, stating that in the case of **Abdul Ibrahim @Masawe** (supra), the Court nullified the proceedings in view of the various irregularities discerned therein which the Court found to have prejudiced the rights of the appellants and it was not only on the court's failure to explain to the assessors their duties as in the instant case.

The learned State Attorney invited us to take account of the stated position in the case of **Salehe Rajabu @Salehe Vs Republic,** Criminal Appeal No. 318 of 2017 (unreported) discussed in the case of **Abdul Ibrahim @ Masawe** (supra) on page 12. He argued that in that case, the Court found that failure to explain duties to the assessors where the assessors fully participate in the proceedings is a curable irregularity. He also argued that the appellants have failed to show how that anomaly prejudiced their rights. He thus implored us to be inspired by the said stance and find the ground to lack merit. Similarly, the learned State Attorney conceded that the age of the assessors was not recorded in compliance with section 266 (1) of the CPA, however, he implored us not

to deliberate on it since this was not a ground of appeal and thus should not be deliberated.

On our part, having heard the rival submissions we are alive to the fact that before the amendments ushered in by Written Laws (Miscellaneous Amendment) Act, No. 1 of 2022 which came into operation on the 22/2/2022, Section 265 of the CPA was stipulated in mandatory terms that all trials before the High Court must be conducted with the aid of assessors. It stated: -

> *"All trials before the High Court shall be with the aid of assessors the number of whom shall be two or more as the court thinks fit."*

The position of the Law regulating the role of assessors in criminal trials as it was before the recent above-mentioned amendments required that when the High Court conducts criminal trials, it must sit with assessors. It is the Court that selects assessors as expounded in section 285 of the CPA. The rule of practice is that the accused must be given a right to comment or object to the assessors as stated in various decisions of this Court, such as; **Laurent Salu and 5 Others Vs Republic**, Criminal Appeal No. 176 of 1993, and **Hilda Innocent Vs Republic**, Criminal Appeal No. 181 of 2017 (both unreported). In the case of **Abdul Ibrahim @Massawe Vs Republic**, (supra), the Court had an

opportunity to discuss the procedure of the selection of assessors and stated:

> *"It follows then that the proper procedure of selecting assessors starts with the court to select them, then the accused person is given a chance to object to any assessors and finally the trial Judge informs and explains to the assessors on their role and responsibilities from the beginning up to the end of the trial where they have to ask questions to seek clarification from the witnesses and at the end to give their separate opinions."*

In the present case, we find that the trial court essentially complied with sections 265 and 285 of the CPA in that the assessors were duly appointed to assist the court in the conduct of the trial. Their selection was after the appellants had been invited to comment and shown no objection to the appointment as found on page 12 of the record of appeal. The anomaly seen which has been conceded by the learned State Attorney is that after their appointment, the trial judge did not explain to them their role and responsibilities in the trial. The question before us for determination is whether the highlighted irregularity was fatal to warrant nullifying the proceedings as proposed by the learned counsel.

The Court has had the opportunity to discuss non-compliance of procedure relating to the appointment of assessors, stating that it should depend on the circumstances of each case (see **Tongeni Naata Vs Republic** [1991] TLR 54). In deliberating on a similar anomaly, in the case of **Salehe Rajabu @Salehe** (supra), we stated:

> "... *we agree with the learned Senior State Attorney that though there was such irregularity, it was not prejudicial to the appellant since the assessors participated in the whole trial as they heard the witnesses of both the prosecution and defence, asked them questions and gave their opinion.*"

Again, in the case of **Ernest Jackson @Mwandikaupesi and Another Vs Republic**, Criminal Appeal No. 408 of 2019 (unreported), where after considering the import of explaining the duties to the assessors upon appointed and having considered the circumstance of the case before it, the Court held:

> *"Having scrutinized the entire trial proceedings, our impression is that the assessors were fully alert and that they actively participated in the proceedings. Their incisive opinions and verdicts of not guilty recorded after the learned trial Magistrate's summing up, as shown at pages 132 to 134 of the record of appeal, confirm that the assessors knew their duties and that they devotedly discharged them despite having not*

been informed of them before the trial commenced. We would, therefore, dismiss the third ground of appeal as we find the omission complained of having not occasioned any failure of justice."

Accordingly, considering the circumstances of the instant case, we agree with the learned State Attorney that the anomaly is not fatal and did not prejudice the rights of the appellants for the following reasons: One, the record of appeal reveals that after their selection the assessors were invited to question each of the prosecution and defense witnesses, a role they exercised fully. Second, at the end of the trial, the trial judge did sum up to the assessors in compliance with section 298 (1) of the CPA and they gave their verdicts as found on pages 64 and 65 of the record of appeal. The opinions of the assessors are detailed and show their deliberation on the adduced evidence and conclusions in the factual settings. Third, the appellants failed to clearly outline how the anomaly prejudiced their rights. For the foregoing, we hold that the anomaly is curable under section 388 of CPA.

On the issue of the trial judge failing to record the ages of the selected assessors raised by the appellant's counsel in compliance with section 266(1) of the CPA, we agree with the learned State Attorney that this was not a ground of appeal and that the learned counsel for the

appellants did not expound how this prejudiced the appellants. It is clear as shown above that the assessors showed alertness and commitment and duly performed their duties throughout the trial. Therefore the 1st ground falls.

Amplifying the 2nd ground of appeal, the learned counsel for the appellants claimed that the defence of *alibi* presented by the appellants was not duly considered. He argued that the trial court rejected the defence without giving it due consideration even though it dented the presented prosecution case. He thus prayed for the Court to find this vitiated the proceedings since the appellants' rights were infringed.

The learned State Attorney argued that the appellants' counsel arguments are misconceived since the trial court deliberated on the defence presented in court by the appellants in the respective judgment in compliance with section 212 of the CPA. He contended that the record of appeal pages 75-79 shows the summary of the defence and the analysis of the defence of *alibi* of each of the appellants is found on pages 81-83 and that the trial judge was of the view that the said defence was unbelievable and too weak to raise doubts on the prosecution evidence, and hence rejected it.

We have gone through the record and agree with the learned State Attorney that the record shows that the trial judge did summarize and analyze the defence and then rejected it. With respect to the 1st appellant, his defence is discussed at page 77 as it was adduced by DW1 and DW2. The trial judge found it too weak and implausible to shake the prosecution case against him, having regard to what he found to be impeccable evidence adduced by PW1's of having identified the 1st appellant at the scene of the crime. There was also the fact that DW1 and DW2's evidence was contradicted in material facts. Regarding the 2nd appellant's defence of *alibi* which was supported by tendering bus tickets admitted as exhibit D1, the trial judge considered and rejected it questioning the authenticity of the tickets finding them lacking in important factors such as the year of issue and the respective itinerary which led the trial judge to reject the defence finding that it did not shake the evidence of PW1 and PW2 of having identified the 2nd appellant at the scene of the crime and his role there. The 3rd appellant's defence was considered extensively from pages 81-83 and ultimately rejected it.

As the record reveals, clearly, as argued by the learned State Attorney, the defence of all the appellants was amply discussed by the trial court. We are aware that the other complaint on this ground was that the trial judge's analysis of the defence was not thorough and called upon

us to reappraise it. Suffice to say, this being the first appeal, the Court's duty, is as stated in Rule 36 (1) (a) of the Tanzania Court of Appeal Rules, 2009 (the Rules), to re-appraise the evidence on record and draw inferences of facts to reach own conclusion (see **Charles Thys Vs Hermanus P. Steyn**, Civil Appeal No. 45 of 2007 (unreported)).

We have had an opportunity to revisit the record of appeal in consideration of the 2nd ground of appeal. The defence of the 1st appellant was that of *alibi*, that he was working as a boda boda rider at Sirari and therefore not at the scene of the crime on the date and time alleged the offence charged was committed. The 2nd appellant's defence was also that of *alibi*, he alleged that on the day the offence charged was committed he was in Mwanza attending to a land dispute before the Minister for Lands, Housing and Human Settlements. He also tendered bus tickets which were admitted as exhibit D1. The 3rd appellant's defence was that of *alibi* adducing that on the respective dates of commission of the offence he was attending to his child who was hospitalized at Magoto Hospital.

We are inclined to concur with the learned trial judge, that the prosecution evidence on the identification of the appellants is very strong and believable. PW1 adduced that before being attacked he saw an armed 2nd appellant who was their leader reminding the group of what they had

agreed not allowing any person from Kyoruba to work on the land and shouting why PW1 was left standing. He further stated that thereafter the 2nd and 3rd appellants cut him at the right side and then centre of his head before he fell. While he was down and before he lost consciousness, he saw the 1st appellant was directing his weapon to cut him on the head and he protected himself with his arm, and his arm was cut. The incident occurred at 8.30 a.m. when conditions for identification were favorable. PW1 stated that he informed PW2 who came to his rescue the names of the 1st, 2nd and 3rd appellants as being among those who attacked him.

PW1 testified that he knew the appellants prior to the incident. He had known the 2nd appellant for ten years, that he was a resident of Kyebweye Village and the Chairman. The 3rd appellant resided in Nyakoga Village and knew him for 5 years while the 1st appellant was a boda boda rider and had known him for 6 years. PW2's evidence corroborated that of PW1, stating that while at the village waiting for the Kyoruba Village chairman he heard a voice calling and before he heeded to the call, he saw the 2nd and 3rd appellants running to the voice from where he had heard the voice calling. That the 2nd appellant was armed with a sword tied on his waist and a bow and arrows and the others running from the scene to the river had arrows and machetes. PW2 rushed to where he heard the voice calling and found PW1 lying on his back, his head severely

injured. PW2 testified that PW1 informed him that he had been cut by 1st and 3rd appellants who had been directed to do that by the 2nd appellant.

The 1st appellant's defence that he was not at the scene of the crime but riding his bodaboda in Sirari did not raise doubt to the prosecution evidence and even his witness DW2, Buhuru Getoka who testified that he was with 1st appellant until around 07.00 a.m. and left him was not truthful because later when cross-examined by the learned State Attorney at page 34 of the record, he changed his story stating he was with the 1st appellant until around 10.30-11.00 a.m. on the day of the incident. Clearly, he was a witness not to be believed as found by the learned trial judge.

The 2nd appellant's defence relied on Exhibit D, bus tickets to establish that he was in Mwanza on the alleged date of commission of the offence charged. We have examined Exhibit D found on page 102, the ticket with serial No. 180366 shows it was used on 11/7 without the year being shown and does not show the itinerary and the ticket with serial No. 109514 is also written 15/7 without the year or the route. The *alibi* of the 3rd appellant was that on the material day when the offence charged was committed, he was at Magoto Hospital attending to his child who was hospitalized.

Having reappraised the defence of the appellants we find nothing to lead us to depart from the findings of the learned trial judge, especially in light of the evidence of identification of the appellants at the scene of the crime by PW1 supported in material facts by that of PW2. The trial judge found PW1 and PW2 who identified the appellants to be credible witnesses and we find nothing to lead us to depart from the said finding, finding no misapprehension of their evidence. Indeed, the evidence of identification of the appellants by PW1 was in favorable conditions and fulfilled all known criteria for proper identification with no possibility of mistaken identity (See **Waziri Amani Vs Republic** [1980] TLR 250, **Raymond Francis Vs. Republic** [1994] TLR 100 and **Said Chaly Scania** Vs Republic, Criminal Appeal No. 69 of 2005 (unreported)). We thus find this complaint lacking in merit.

Following the pattern followed by counsel for the parties, we shall deal with the 4th complaint now and close the chapter with the 3rd complaint. The 4th complaint challenges the trial courts finding that the prosecution proved the case beyond reasonable doubt against the appellants. The learned counsel for the appellants argued that the prosecution did not prove the case against the appellants since identification was weak and the defence raised doubts about the prosecution case. He thus prayed that the complaint be found to have

merit. In response, Mr. Ibrahim argued that the defence fronted by the appellants was too weak to raise doubts about the presented prosecution case. He submitted that all the ingredients of the offence charged were met and the appellants were identified by the prosecution witnesses without any possibility of mistaken identity. He urged the Court to find the ground to lack substance.

In determining this ground, our starting point is grounded on the fact that the appellants were charged and convicted of the offence of attempted murder contrary to section 211(a) of the Penal Code. Section 211 (a) of the Penal Code reads:

> *"Any person who-*
>
> *(a) attempts unlawfully to cause the death of another, is guilty of an offence and is liable to imprisonment for life."*

In the case of **Hamis Tambi Vs Republic** [1950] 20 EACA 176 it was held that it is an essential ingredient to prove intent to kill in a charge of attempted murder. This position was reiterated in the case of **Bonifas Fidelis @Abel Vs Republic**, Criminal Appeal No. 301 of 2014 (unreported) where the Court held:

> *"We must hasten to point out that section 211 (a) is not a standalone provision in so far as all the*

ingredients of attempted murder are concerned. The word "attempt" which is mentioned under section 211 (a) is defined under section 380 of the Penal Code. This means, to appreciate the scope of the ingredients of the offence of attempted murder, sections 211 (a) and 380 must be read together."

Thus, from on the above provisions, clearly, when deliberating on the charge of attempt to murder, the contents of section 380 of the Penal Code have also to be considered. Section 380 states:

*"380.-(1) When a person; **intending to commit an offence**, begins to **put his intention into execution** by means adapted to its fulfillment, and **manifests his intention by some overt act** but does not fulfill his intention to such extent as to commit the offence, he is deemed to attempt to commit the offence.*

(2) It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfillment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention." [Emphasis added].

The Court in **Bonifas Fidelis** (supra) went on to further summarize what they found to be the four essential ingredients of attempted murder

arising from section 211 (a) read together with section 380 of the Penal Code, as follows:

> *"Firstly, proof of intention to commit the main offence of murder. Secondly, evidence to prove how the appellant begun to employ the means to execute his intention. Thirdly, evidence that proves overt acts which manifests the appellant's intention. Fourthly, evidence proving an intervening event, which interrupted the appellant from fulfilling his main offence, to such extent if there was no such interruption, the main offence of murder would surely have been committed."*

We align ourselves to the said position, and applying it to the instant appeal, on the first ingredient, we are of the view that the act of cutting PW1 on the head with machetes, arrows and bows was clearly intended to cause the death of PW1 with malice aforethought. Malice aforethought may be inferred in the weapons used and the fact that the cutting concentrated on the head of PW1, a very sensitive area and done by more than one person. The injuries sustained by PW1 were confirmed by Leticia Modest (PW3), a medical officer who attended him on 12/7/2018 at around 1.00 pm. PW3 stated that PW1 had a large injury on his right arm, right shoulder, and head and referred him to the District Hospital for further treatment. The PF3 admitted as Exhibit P1 stated PW1's injuries

constituted a grievous harm. The second and third ingredients are evidenced by what is stated in explaining the first ingredient. The fourth ingredient is fulfilled by the fact that according to PW1 when he had fallen down, hurt and almost unconscious, he heard the 1st appellant state that they had already finished him. Therefore, the intervening factor was the severe conditions he was in which led the assailants to believe he was already dead, and they had completed their mission.

Accordingly, clearly, the four elements of the offence of attempt to murder were fulfilled since the appellant's acts manifested an intention to kill PW1 as gathered from the nature of the act done, the intention of the offenders and the obtaining circumstances that led to the unlawful acts against PW1. We are thus in tandem with the learned trial judge that the evidence adduced by the prosecution proved the offence charged beyond reasonable doubt. Thus, the complaint lacks merit.

Complaint number four is one that faults the trial court, upon conviction of the appellants, for imposing different sentences on them. The 1st and 3rd appellants were sentenced to 10 years imprisonment whilst the 2nd appellant was sentenced to 5 years imprisonment. The learned counsel for the appellants found this to be discriminatory especially since the trial judge did not expound reasons for imposing the different

sentences or whether they were pegged on the mitigation of the appellants or not. He argued further that the sentence of imprisonment for 10 years to the 1st and 3rd appellants was excessive taking into account the mitigation advanced by the respective appellants.

On the other hand, the learned State Attorney argued that the fact that the appellants did not receive the maximum sentence of life imprisonment for the offence they were convicted of should lead to finding the complaint unjustified. He contended that the record shows that the trial judge considered the appellants submitted mitigation and the submission by the prosecution and then exercised his discretion having considered various factors before him. He thus contended that there is nothing to fault the trial judge on this because he properly directed himself by considering the 2nd appellant's minimal involvement in the commission of the offence leading to the injuries sustained by PW1. He further stated that the Court can only interfere with the discretion exercised by the trial court where there are errors and misdirections or where the sentence is excessive and prayed that we be guided by the position stated in the case of **Kija Japhet Vs Republic**, Criminal Appeal No. 2017 (unreported) to reinforce his arguments.

Appreciating the submissions by counsel for both sides on the 4th complaint, our starting point is restating the settled law that sentencing is the domain of the trial court and that the appellate court can alter or interfere with the imposed sentence by the trial court on rare occasions where there are good grounds or circumstances to warrant doing so as emphasized in various decisions of this Court including, **Silvanus Leonard Nguruwe Vs Republic** [1981] TLR 66 and **Kija Japhet Vs Republic** (supra) , **Katin Da Simbilia @ Ng'waninana Vs Republic**, Criminal Appeal No. 15 of 2008 and **Willy Walosha Vs Republic,** Criminal Appeal No. 7 of 2002 (both unreported).

In the present appeal, having convicted the appellants, having heard the submissions from the prosecution side and heard mitigating factors from each of them and having considered the participation of each of the appellant stated:

> "*.... All aggravating and mitigation factors taken, I think it meets justice of this case to punish the offenders at varying degrees. The statutory sentence for the offence of attempted murder is life imprisonment but in this case this court imposes the following sentences in terms of the factors submitted by the counsel for the parties and the third accused person.*"

Thereafter, the trial judge proceeded to sentence them, the 1st and 4th accused persons (now the 1st and 3rd appellants) to 10 years imprisonment and the 3rd accused (now the 2nd appellant) to 5 years imprisonment. Having scrutinized the record, we agree with the learned State Attorney that the trial judge duly exercised his discretion. The trial judge considered the circumstances of each appellant which was also reflected in the submissions of both the prosecution and the 2nd appellant, that though he had been present at the scene of the crime, he had not inflicted any blow to PW1 to sustain his injury and put his life in danger.

Regarding the argument put forward by the learned counsel for the appellants that the sentence meted to the 1st and 3rd appellants is excessive, which was vehemently denied by the learned State Attorney arguing that it is within the law, we are guided by various decisions of the Court on when the Court may interfere with the sentence. In the case of **Ramadhani Ibrahim Vs Republic**, Criminal Appeal No. 10 of 2002 (unreported). In the latter case, the Court said:

> "*Generally, an appellate court will alter a sentence if it is evident that it is manifestly excessive. What is implied here is that the appellate court will not interfere with a sentence assessed by a trial court merely because it appears to be severe. It will only interfere if it is plainly excessive in the circumstances of the case.*"

In the present appeal, for the reasons stated above, we find no evidence that shows that the sentence imposed on the appellants was too excessive to warrant our interference, especially reflecting on the fact that the maximum sentence for the offence charged is life imprisonment and the offence committed. The complaint lacks substance.

For the above reasons, this appeal against conviction and sentence is devoid of merit and is dismissed in its entirety.

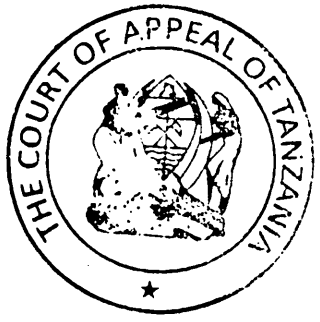
DATED at **MUSOMA** this 13th day of June, 2022.

G. A. M. NDIKA
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

The Judgment delivered this 14th day of June, 2022 in the presence of the Appellants in person and Mr. Isihaka Ibrahim, learned State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.



C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL