IN THE COURT OF APPEAL OF TANZANIA

AT TABORA

(CORAM: KOROSSO, J.A., GALEBA, J.A., And MWAMPASHI, J.A.)

CRIMINAL APPEAL NO. 196 OF 2019

ONESMO YOHANA @ TAILE .....APPELLANT

VERSUS

THE REPUBLIC .....RESPONDENT

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

(Matuma, J.)

dated the 14th day of April, 2019

in

DC Criminal Appeal No. 174 of 2018

.....

JUDGMENT OF THE COURT

7th & 10th November, 2022

KOROSSO, J.A.:

The factual settings giving rise to the appeal before us are that; Onesmo Yohana Talie, the appellant was on 22/4/2016 arraigned in the Resident Magistrate's Court of Kigoma at Kigoma, in RM Criminal Case No. 16 of 2016. He was charged with 220 counts of forgery contrary to sections 333, 335(a) and 337 of the Penal Code [Cap. 16 R.E. 2002 now R.E. 2022], (the Penal Code). For the said counts he was alleged to have forged several cash deposit receipts of Exim Bank and NMB Bank purporting to show that, the amounts indicated in the bank deposit slips were deposited into the bank accounts of his employer, GBP Tanzania Limited, which he knew to be false.

The appellant was also charged with 110 counts of uttering false documents contrary to section 342 of the Penal Code. The particulars of which were that the appellant on various dates fraudulently uttered cash deposit receipts purporting to show that the money was deposited in bank account No. 0060018108 at Exim Bank and bank account No. 31110017977 at NMB, the bank accounts belonging to GBP Tanzania Limited, a fact he knew to be false.

The appellant other charges were 110 counts of Stealing by Agent contrary to sections 258(1) and 273(b) of the Penal Code. The allegations were that the appellant did steal various amounts of money entrusted to him by his immediate boss, one Paulo Riwa for him to deposit the said monies into the bank accounts of GBP Tanzania Limited at Exim bank Account No. 0060018108 and bank account No. 31110017977 at NMB. The appellant was also charged with 8 counts of money laundering contrary to section 12(b) and 13(a) of Anti Money Laundering, Act No. 12 of 2006. It was alleged that the appellant did launder the stolen money by converting it into real properties such as Plot No. 1154 Block "O" at Majengo area Kigoma Ujiji valued at Tshs. 101,000,000/=, motor vehicle with Registration No. T159 BHW make, Toyota Prado valued at Tshs. 25,000,000/=, motor vehicle with Registration No. T917 CWY Toyota Noah valued at Tshs. 10,000,000/=, motor vehicle with Registration No. T682 AGB make Mitsubishi Fuso valued at Tshs. 15,000,000/=, motor

vehicle with Registration No. T.329 CLE make Mitsubishi Rosa valued at Tshs. 10,000,000/=, motor vehicle with Registration No. T596 CYE make Toyota Passo valued at Tshs. 6,500,000/=, a car engine number 6D16-791051 valued at Tshs. 13,500,000/= and Plot No. 9144 Block "O" at Nzuguni B area within Dodoma District in Dodoma Region valued at Tshs. 58,000,000/=.

The prosecution called 34 witnesses and tendered 23 exhibits to prove their case. The prosecution case was to the effect that the appellant was an employee of GBP Tanzania Limited as a pump attendant at Mwanga fuel station in Kigoma, and under the immediate supervision of one Paulo Riwa (PW5). The appellant's duties included selling fuel. According to PW5, the daily cash sales by all pump attendants were handed to him for preparation of reports and thereafter, he gave the money to the appellant for him to deposit it at stipulated bank accounts at Exim Bank account No. 0060018108 or account No. 31110017977 at NMB. It was alleged that the appellant, when handed the daily cash, instead of depositing the entrusted cash to the stipulated accounts, converted it for his own use and in the process made false deposit receipts of the two bank accounts and presented the faked deposit slips to PW5. It was the evidence for the prosecution that investigations conducted, gathered that the appellant used the diverted funds to buy various properties and personal items as shown in the charge sheet.

Rashid Seif Sudi (PW1), the Director of GBP Tanzania Limited, adduced that on 4/4/2016 while at the Exim Bank processing the transfer of one billion Tanzania shillings from the GBP account, he discerned that some cash from Mwanga Fuel Station had not been deposited into the respective bank account. Upon further scrutiny, they noted that there was no cash deposit made on 19/3/2015 for about Tshs. 3.9 million; on 25/3/2015 for about Tshs. 4.9 million and Tshs. 3.9 million on 30/3/2015. The missing funds led the GBP Tanzania Limited management to suspect theft to have been occasioned at their fuel station at Mwanga, which was the appellant's duty station.

According to the prosecution witnesses, the various cash deposit receipts which had been stored as evidence of the money having duly been deposited in the respective bank accounts as expected, when taken to the respective banks for verification were found not to be genuine but forged. The incident was reported to the police and led to the arrest of the appellant and commencement of investigations. PW1 stated that investigations revealed the total amount stolen between 19/3/2015 and 30/3/2016 to be Tshs. 634,000,000/=. The cash deposit receipts were sent to the Forensic Bureau for Investigations for analysis. ASP Chrisantus Kitandala (PW4), the handwriting expert testified on his findings found in a report which was tendered and admitted as exhibit P5. The appellant

was consequently arraigned in the Resident Magistrate's Court of Kigoma at Kigoma as alluded to herein.

The appellant herein, testified as (DW1) and denied the charges. He called five witnesses for defence, including himself, and did not tender any exhibit. He refuted having been given money by PW5 daily on the period specified in the charge to deposit to the stated GBP bank accounts at Exim and NMB Bank. He contended that in the absence of any document establishing in writing that PW5 gave him the money, then there is no proof of any such allegations. He also challenged the Exim Bank statement admitted as exhibit P2 stating that it does neither bear his name nor contain any transaction where his name is given. The appellant also negated the substance of exhibit P9 stating that there is no mention of his name or his signature therein and challenged the evidence of PW10 who audited GBP bank accounts. The appellant admitted to owning various properties such as the house at Majengo on Plot No. 1154 Block 'O', Majengo area in Kigoma Ujiji Municipality and stated that he acquired the said plot after selling his house at Kahabwa, assertions which were supported by Joctan Kabula Zabron (PW27).

The appellant further testified that he had been cultivating crops at Kasulu and Pamila village in Kaliua, Tabora, since 2007, where he usually harvested 18-20 sacks from one acre. He claimed to operate a charcoal-selling business whose returns were between Tshs.500,000/= to

900,000/= per month. Other business ventures alluded to by appellant included, soap selling which he had started in 2001 having invested the capital of Tshs. 2,000,000/=, selling of salt which came from Manyoni, District, which is a business undertaken in partnership with Shaban Jafari (DW3), who also supervised the said business. The appellant testified to having purchased Mitsubishi Fuso (exhibit P16) in 2014 from the funds from his salt business and a motor vehicle Prado make (exhibit P22) after selling his motor vehicle, make Toyota Noah to Rosemary Mkami Emmanuel (PW25). Additionally, the appellant testified about operating another business of beekeeping in Kaliua District which was under the supervision of DW3. Easter Lameck (DW2) the appellant's wife, DW3 and Isaya Godfrey (DW4) supported most of the appellant's testimony with respect to how the various properties were acquired and the business operations the appellant claimed to be engaged in as of 2007. Sayoni Katubanya Pamwe (DW5), the appellant's brother-in-law, testified that together with the appellant they have engaged in agricultural activities as of 2008. That they had five acres at Rusesa and Pamila and they harvested 18 to 22 sacks of rice per acre up to the time of the appellant's arrest which ended their partnership.

At the end of the trial, the trial court was satisfied that the prosecution had proved its case beyond reasonable doubt and thus convicted the appellant on all counts. He was sentenced to five years

custodial sentence for each of the 220 forgery counts, five years imprisonment for each of the 110 counts of uttering false documents, six years imprisonment for each of 110 counts of stealing by agent, and five years custodial sentence in each of the 8 counts of the offence of money laundering. The trial court ordered the sentences to run concurrently. Additionally, the trial court ordered that all proceeds of crime that is; a house on Block No. 1154 "O" Majengo, Motor vehicles make, Toyota Prado, Toyota Noah, Mitsubishi Fuso, Mitsubishi Rosa and the engine be kept under the supervision of the Republic and that they should not be tempered with or altered until application under the Proceeds of Crime Act is filed and after the expiration of the period for appeal.

Aggrieved, the appellant appealed to the High Court and his appeal was dismissed with respect to the convictions on all the counts and the imposed sentences on conviction of each count of the offence of forgery and uttering false documents. The meted sentences on each count related to conviction of stealing by agent were set aside and substituted with a sentence of five years imprisonment. The sentences for conviction of each count of money laundering were substituted for a sentence of a fine of Tshs. 100,000,000/= for each count or in default a custodial sentence of five years. All custodial sentences were ordered to run concurrently. The High Court also set aside the order that all proceeds of crime be kept under the supervision of the Republic to await an application under the

Proceeds of Crimes Act and substituted it with an order that the motor vehicle engine (exhibit P14), a motor vehicle with registration no. T529 CLE, make Mitsubishi Rosa (exhibit P15), motor vehicles Noah T917 CWY and Fuso T682 AGB exhibit P16 collectively, the house on plot No. 11543 Block 'O" Majengo and exhibit P22 Toyota Prado No. T159 BHW be handed over to the victim company GBP Tanzania Limited as part of the compensation for the stolen money related to the offences the appellant stood charged.

Still dissatisfied, the appellant lodged an appeal to this Court by way of a memorandum of appeal that fronts five grounds of appeal. At this juncture for reasons to be revealed herein, we find it pertinent to reproduce only the first ground of appeal which may be paraphrased as follows:

1. *That, the High Court Judge erred in law and fact in holding that there was no miscarriage of justice occasioned and the appellant's fair trial was not prejudiced after the trial court proceeded with the hearing without arraigning the appellant on all 448 counts and ensuring the appellant pleaded thereto after the prosecution had amended the charge as shown at page 38 to 39 of the trial court proceedings.*

On the day of hearing of the appeal, the appellant was present, and he was represented by Mr. Kanani Aloyce Chombala, learned Advocate.

Mr. Omary Abdallah Kibwana Senior State Attorney and Ms. Lucy Enock Kyusa, learned State Attorney, represented the respondent, Republic.

When provided with an opportunity to amplify on the grounds of appeal, Mr. Chombala commenced by praying to adopt the grounds of appeal filed. Expounding on the first ground of appeal, he faulted the holding of the High Court Judge that failure by the trial court to facilitate the appellant to plead to all the counts on the offences charged against him after the prosecution side had substituted the charge sheet was not prejudicial to the rights of the appellant. He argued that the finding was faulty under the circumstances and in contravention of the law.

Mr. Chombala further argued that the law stipulates that before the commencement of a trial, the accused must be arraigned. He then cited the cases of **Fred Stephen and Msafiri Kimario v. Republic**, Criminal Appeal No. 43 of 2010, **Juma Gulaka and 2 Others v. Republic**, Criminal Appeal No. 585 of 2017, **Ramadhani Hussein Rashid @Babu Rama and Another v. Republic**, Criminal Appeal No. 220 of 2018 and **Tizo William v. Republic**, Criminal Appeal No. 364 of 2017 (All unreported) to augment his assertion that an accused person must be arraigned and that where there is non-arraignment of an accused person, it renders the trial a nullity.

The learned counsel for the appellant argued that in the instant appeal, the record clearly shows on page 487 of the record of appeal, that

upon the prosecution side's substitution of the charge which had 448 counts on various offences as stated therein, the trial court called upon the appellant to plea only on the counts which were added, that is, counts 441 to 448 leaving counts 1 to 440 without the appellant having pleaded against. He argued that even though the record of appeal shows the trial magistrate to have recorded that the appellant pleaded to all counts, a closer scrutiny of the record plainly reveals otherwise, that the appellant having only pleaded on the 8 amended counts, which was improper. He contended that plainly, the trial magistrate failed to properly direct herself in compliance with section 234(1) and (2) of the Criminal Procedure Act [Cap 20 R.E. 2002, now R.E. 2022] (the CPA).

Furthermore, the learned counsel for the appellant relying on the decisions of **Juma Gulaka and 2 Others** (supra) and **Fred Stephen and Another** (supra), stated that based on the cited cases, the position is that upon substitution of a charge, the previous charge ceases to exist. He thus contended that this being the position of law, undoubtedly, the first appellate Judge misdirected himself in holding that the appellant was not prejudiced by the trial court's failure to allow the appellant to plead to all the counts upon substitution of the charge. He thus prayed that the Court be guided by the law and its previous decisions and hold that in the instant appeal, the trial was a nullity.

On the consequences that follow such a finding, the learned counsel for the appellant alluded that although the normal option is to order a retrial, but this is upon considering all the pertaining factors and determining what does the justice of the case require. Mr. Chombala thus contended that in the present case, justice demands that the appellant be acquitted of the offence charged, the proceedings and judgment of the High Court and trial court be nullified, conviction quashed, and the sentence set aside for the following reasons: **One**, that the appellant had already fully served the sentence which was imposed on him upon conviction and confirmed by the High Court on appeal. Thus, it will not be judicious for the case to be retried and he cited the decision in the case of **Tizo William** (supra) to reinforce his prayer. **Two**, that a retrial will accord an opportunity for the prosecution to fill various gaps in their case to the detriment of the appellant. He asserted that in the instant case the prosecution failed to prove their case to the standard required, since there was no evidence to link the appellant to the cash deposit receipts which he had allegedly forged, nor to link him with any deposits in the respective GBP accounts as alleged. He argued that thus, there was no proof that the appellant forged the documents or uttered the cash deposit receipts as alleged. He also alluded to the fact that the absence of documentary evidence to prove that PW5 handed him any money daily to deposit to the respective accounts of GBP, leaves doubts since, in the absence of a record of the said transactions, prudence cannot entertain an assertion

that one can be given such huge amounts to deposit orally. **Three**, he contended that the amount alleged to have been stolen was not proved and essentially there was variance between the charge and the evidence. He argued that while the total amount in the counts in the charge was not particularly proved by any witness for the prosecution, the first appellate Judge totaled it to be Tshs. 626,177,500/= having decided to do the mathematics himself from the amounts stated in the counts of stealing by agent and uttering false documents. He complained further that although the above amount is what was indicated by the first appellate Judge as the total amount stolen on page 1993 of the record of appeal, however, at page 1994 of the record of appeal, he quoted the defrauded amount to be Tshs. 621,822,600/=. PW1, who was the boss of GBP stated that the amount stolen was Tshs. 634,000,000/=, stolen between 19/03/2015 and 30/3/2016. The learned counsel for the appellant thus argued that the exact amount was unclear, especially after the evidence of PW10 and exhibit P9 were expunged by the first appellate court. He contended that in such circumstances, plainly, justice demands that the appellant be set at liberty as was the case in various cases which he had already cited.

Confronting the first ground of appeal, Ms. Kyusa's initial stance was to support the conviction and sentence and objected to the appeal and urged the Court to find the ground to be misconceived. However, upon further reflection having scrutinized the record of appeal, she conceded to

the first ground that the appellant did not plead to all the counts in the charge after it was substituted. She submitted that this contravened section 234 (1) of the CPA whose import has been reiterated in various decisions of the Court including those cited by the learned counsel for the appellant. She thus urged the Court that under the circumstances, the remedy available is to nullify the proceedings of the trial court and the first appellate court, quash the conviction, and set aside the sentence. However, she differed with the learned counsel for the appellant on the way forward, imploring the Court to order a retrial.

Mr. Kibwana, who then decided to chip in, adamantly implored the Court that in the instant case, a retrial is what justice demands. He urged the Court to disregard the argument by Mr. Chombala that the prosecution did not prove its case thus a retrial will accord them an opportunity to fill in the gaps. He stated that the case for the prosecution was proved especially on the counts of forgery. He conceded that in the absence of the evidence of PW10 and exhibit P9 which were expunged by the first appellate court it will be difficult to prove the 110 counts of stealing by agent, 110 counts on the offense of uttering false documents, and the 8 counts on money laundering but there is still ample evidence to prove the counts on the offence of forgery.

The learned Senior State Attorney refuted the assertion that there was a variance between the charge and evidence, saying that the

discrepancy in the total amount alleged to have been stolen might be relevant for the counts on stealing by agent and money laundering but not those on forgery and uttering false documents. He thus prayed that the Court finds that justice demands that upon finding that the appellant did not plead as per the law, an error that is fatal and incurable under section 388 of the CPA, the Court should order a retrial from the stage of arraignment, so that the appellant may plead. That the fact that, the appellant has already served his sentence should not be considered, since the proceedings prior to the plea-taking exercise upon substitution of charges should remain intact including the admitted substituted charge against the appellant and justice must be seen to be done for all parties.

Mr. Chombala's rejoinder was to reiterate what was submitted in his submission in chief and implored the Court to find that the charges against the appellant were unproven and to restate the fact that justice will be occasioned with the acquittal of the appellant and not a retrial having already served the sentence imposed by the trial court and confirmed by the High Court.

We have carefully considered the submissions before us from the learned counsel for the appellant and both Mr. Kibwana and Ms. Kyusa for the respondent Republic. We have also gone through the record of appeal and the cited authorities. The issue for our determination is whether in the trial subject to this appeal, upon substitution of the charge by the

prosecution, the appellant's plea-taking was proper in terms of sections 228 (1) and 234(1) of the CPA which state as follows:

> *"228. -(1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge."*

234(1) of the CPA. Section 234 (1) and (2) state:

> *"234.-(1) Where at any stage of a trial, it appears to the court that the charge is defective, either in substance or form, the court may make such order for alteration of the charge either by way of amendment of the charge or by substitution or addition of a new charge as the court thinks necessary to meet the circumstances of the case unless, having regard to the merits of the case, the required amendments cannot be made without injustice; and all amendments made under the provisions of this subsection shall be made upon such terms as to the court shall seem just*
>
> *(2) Subject to subsection (1), where a charge is altered under that subsection-*
>
> *(a) the court shall thereupon call upon the accused person to plead to the altered charge;"*

The above provisions are mandatory, and the trial court has to comply with and observe them. In the case of **Thuway Akonnay v.**

Republic [1987] T.L.R. 92, the Court when discussing section 228 of the CPA and section 346 of the CPA (which is now section 388(1) of the CPA), stated:

> *"... it is mandatory for a plea to a new or altered charge to be taken from an accused person, as otherwise the trial becomes a nullity."*

In the instant appeal, indeed on 22/4/2016, upon being arraigned, the trial court proceeded with plea taking for all the 444 counts as can be seen from pages 451 to 472 of the record of appeal. For each count, the appellant (then, the accused) is recorded to have said, "*it is not true*" for each count. The trial court on page 472 of the record of appeal, the Court recorded thus:

> *"Entered Plea of Not Guilty by the accused person in respect of the 1st -444th counts".*

Thereafter, upon the prosecution substituting the charge sheet, the record of 10/11/2016 on pages 486-488, reproduced is as follows:

> *"Date: 10.11.2016*
>
> *Coram: S. J. Kainda -SRM*
>
> *PP: Masanja – State Attorney*
>
> *CC. Kazamba*
>
> *Accused: Present*
>
> *M/S Rugaihuruza,*

Principal State Attorney assisted by

Mr. Masanja- State Attorney for Republic

*M/**S Rugaihuruza**:*

The matter comes up for Preliminary Hearing. We pray to amend the charge from count 441-448 up to counts and we added more offences. Total counts are 448.

***Mr. Kagashe**:*

I have no objection.

Court: Prayer granted

S. J. Kainda

Senior Resident Magistrate,

10/11/2016

***Court**: Charge read over and fully explained. The accused person reply them and he says:*

1st Count: Count 440 not true.

***Court:** a Plea of Not Guilty*

S. J. Kainda,

Resident Magistrate

10.11. 2016

Court: 441- It is not true

442 Count: It is not true

443 Count: It is not true

444 Count: It is not true

445 Count: It is not true

447 Count: "

448 Count: "

Court: Accused person Entered Plea of Not Guilty to all counts No. 1 up to 448.

S. J. Kainda,

Senior Resident Magistrate

10/11/2016"

Having perused the record reproduced above, evidently, as argued by Mr. Chombala and conceded by the learned Senior State Attorney, after substitution of the charges, the Court only called upon the appellant to plead on counts 441 to 448. Therefore, essentially the appellant did not plead to all the counts of which he stood charged.

We are alive to various decisions of the Court that where the plea is not taken upon arraignment of the accused, the anomaly is fatal and not curable by section 388 of the CPA. In the case of **Naothe Ole Mbila v. Republic** [1993] T.L. R 253 which is referred to in the case of **Juma Galaka and 2 Others** (supra), the Court observed:

> *"1. One of the fundamental principles of our criminal justice is that at the beginning of a criminal trial the accused must be arraigned, that*

is, the court has to put the charge or charges to him and require him to plead.

2. Non-compliance with the requirement of an arraignment of an accused person renders the trial a nullity."

A similar stance can be found in the case of **Joseph Masanganya v. Republic**, Criminal Appeal No. 77 of 2009 (unreported).

In the circumstances, we find that, had the first appellate Judge carefully considered the law and the record of what transpired in the trial court and after having already made a finding that the appellant did not plead to all the counts in the charge after substitution of the charge and thus erroneous, he would not have proceeded to find that the anomaly was curable under section 388 of the CPA and not prejudicial to the appellant. We are therefore like the counsel for both parties, of the firm view, that the omission is fatal, and it rendered the entire trial a nullity. We thus invoke our revisional powers under section 4(2) of the Appellate Jurisdiction Act [Cap 141 R.E 2019] and nullify the proceedings of the trial and first appellate court.

As regards the way forward, the learned Senior State Attorney has beseeched us to order a retrial arguing that justice in the present case demands it since the prosecution has proved its case, especially on the counts charging the appellant with forgery and uttering false documents. The learned counsel for the appellant urged us to set the appellant at

liberty because the case was not proved against him and thus a retrial will give room for the prosecution to fill in the gaps in their evidence. The other argument was the fact that the appellant has already completed the custodial sentence meted by the trial court and thus deserves his freedom. He further contended that an order for retrial will be tantamount to punishing the appellant twice, since upon being convicted on the same charges he duly served the sentence meted.

Certainly, where the Court is satisfied that the discerned error or omission has occasioned a failure of justice, an order for a retrial will be the most appropriate remedy. However, the Court has an option of making any such order as it may consider just and equitable taking into account the particular circumstances pertaining to the matter before it, as held in **Juma Galaka and 2 Others** (supra), that:

> "... *depending on the circumstances of the case, a retrial is in the interest of justice... as it aims to strike a balance by weighing the right of the accused against that of the victim*"

Having considered all the pertaining circumstances, we are constrained to hold that a retrial will not be the best cause of justice to undertake in the instant case for the following reasons. **First**, there are numerous holes in the prosecution case some of which were conceded by the learned State Attorneys in their submissions on the appeal. The alleged stolen or misappropriated amount has not been proved by

evidence of the prosecution witnesses a fact conceded by the learned Senior State Attorney. Similarly, whilst the prosecution side relied on the alleged forged cash deposit receipts, however, by the end of the prosecution evidence there was no clarity on the total amount alleged to have been stolen. There was Tshs. 634,000,000/= alluded to by PW1 relying on the evidence of PW10 and the audit report (exhibit P9), the evidence which was expunged in the first appellate court for being improperly admitted. The High Court Judge also procreated his own figure relying on the amounts stated in the charge sheet and not from the evidence adduced in court. It was worse when the learned first appellate Judge came up with two different figures of the amounts stolen as already alluded to herein above.

Two, the evidence is at variance with the charge sheet, as alluded to above in terms of the amounts stated in the counts in the charge differing from the evidence adduced. There is also the evidence of PW4 who testified that the cash deposit receipts he had to examine to determine whether they were forged or not were only 109 while in the charge, there are 220 counts of forgery. This essentially means that even if the prosecution can prove the charges, proof may only be against the 109 counts which relate to the cash deposit receipts which were examined and found to be forged according to PW4. As held in **Abel Masikiti v. Republic**, Criminal Appeal No. 24 of 2015 (unreported) such variance

renders the charge unproved. We thus hold that, in such circumstances, a retrial may facilitate the prosecution to fill in the holes in their evidence, to the detriment of the appellant.

Three, the fact that having tried, convicted, and sentenced, the appellant has already duly served the sentence imposed upon him being convicted of the charge subject to the instant appeal. In the circumstances, will it be judicious for him to undergo another trial on the same charge under the circumstances we have found that even the prosecution case was weak? We think not.

We are constrained to find that the circumstances of this case do not warrant a retrial to be ordered since it will be prejudicial to the appellant. We are inspired by the direction this Court took on such an issue in the cases of **Ramadhani Hussein Rashiid@Babu Rama** (supra)) and **Tizo William** (supra)). In **Tizo William** (supra) when determining the way forward having nullified the proceedings for contravening section 234 (1) of the CPA, similar to the case on hand, the Court considered the fact that the appellant had been incarcerated for a long time and thus ordered for him to enjoy his liberty.

In the premises, for the reason stated herein, we are of the firm view that an order for retrial will not be in the interest of justice in the current case. We also hold that in the circumstances, our determination of

the first ground of appeal suffices to dispose of the appeal and find no need to determine the remaining grounds of appeal.

In the end, the appeal is allowed, the conviction is hereby quashed, and the sentences set aside. Furthermore, we set aside the consequential orders related to the alleged proceeds of crime.

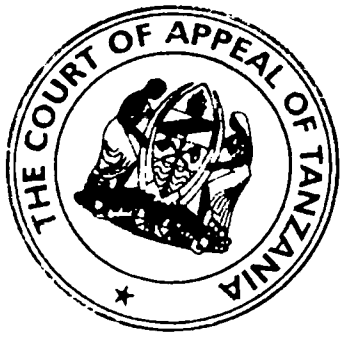
DATED at **TABORA** this 9th day of November, 2022.

W. B. KOROSSO
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Judgment delivered this 10th day of October, 2022 in the presence of the appellant who also was repre sented by Ms. Stella Nyakyi hold brief for Mr. Kanani Aloyce Chombala, learned counsel and Mr. Robert Kumwembe, learned State Attorney for the respondent/Republic, is hereby certified as a true copy of the original.



E. G. MRANGU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL