IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

(CORAM: MKUYE, J.A., GALEBA, J.A., And KIHWELO, J.A.)

CRIMINAL APPEAL NO. 230 OF 2019

RAPHAEL IDEJE @ MWANAHAPA ..... APPELLANT

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT

(Appeal from the Decision of the High Court of Tanzania at Mbeya)

(Mongella, J.)

dated the 28th day of May, 2019
in
Criminal Appeal No. 146 of 2018

.....

JUDGMENT OF THE COURT

16th & 25th February 2022

GALEBA, J.A.:

Initially, Raphael Ideje @ Mwanahapa, the appellant, was charged before the Resident Magistrates' Court of Mbeya for the offence of rape contrary sections 130(1), (2)(e) and 131(1) of the Penal Code [Cap 16 R.E. 2002, now R.E. 2019] (the Penal Code). The case for the prosecution at the trial, was that on 28th September 2017, at Ntangano Village in Mbeya District within Mbeya Region, the appellant had carnal knowledge of a young girl aged 12 years, who, for purposes of concealing her identity will be referred to, in this judgment, as either the victim or PW1. The appellant denied the charge, so the prosecution called a total of seven witnesses, who proved the case against the appellant beyond reasonable

doubt, according to the judgment of the trial court. He was accordingly convicted followed by a statutory minimum sentence of thirty years imprisonment. His appeal against both the conviction and sentence was dismissed by the High Court which upheld the decision and orders of the trial court. Still dissatisfied, he has lodged the present appeal challenging the dismissal of his appeal at the High Court.

The appellant's appeal before us is predicated upon eight grounds of appeal, which can conveniently be paraphrased as follows; **one,** that the first appellate court erred in law because the case at the trial was not proved against him beyond reasonable doubt, **two** that the first appellate court erred in law for it upheld a conviction arising from a judgment in which his defence was not considered, **three** that the first appellate court erred in law as it upheld a judgment arising from proceedings in which it was not proved that the victim mentioned him at the earliest possible opportunity after the offence was committed **four,** that the first appellate court erred in law for his conviction was based on the evidence of PF3 which was tendered by a person who did not prepare it and **five**, that the first appellate court erred in law because it relied on extraneous matters which were not canvassed at the trial. **Six,** that the first appellate court erred in law because it upheld a conviction and sentence of the trial court based on the evidence of PW1 which was recorded without the court

recording the question it asked her before she promised to tell the truth and not lies. **Seven**, that the first appellate court erred in law for upholding a conviction based on evidence which was adduced by PW1, PW2, PW3, PW4, PW5, and PW6, who were all not reliable and lastly, **eight** that the first appellate court erred in law because the age of the victim was not proved.

At the hearing of this appeal, the appellant appeared in person without legal representation, whereas Mr. Alex Mwita, learned Senior State Attorney appeared for the respondent. When asked to elaborate on his grounds of appeal, the appellant submitted that the Court be pleased to adopt his grounds as lodged in Court and permit the learned Senior State Attorney to reply to them so that, if necessary, he would rejoin.

At the outset Mr. Mwita, submitted that ground 5 was new, for the appellant's complaint in that ground was not raised before the High Court. He beseeched us to refrain from entertaining that ground of appeal. We have reviewed the said ground of appeal, the petition of appeal that was presented to the High Court and the Judgment of that court, and we are in agreement with the learned Senior State Attorney, that indeed, the complaint in ground 5 was neither raised before the High Court, nor was it determined by the High Court. The settled position obtaining in this

jurisdiction is that, this Court can only look into matters that came up in the first appellate court and were determined. This Court cannot, on appeal, entertain matters that were neither raised nor decided upon by the court from which the appeal emanated, unless they are threshold matters of law, - See **Diha Matofali v. R,** Criminal Appeal No. 245 of 2015, **Martine Masara v. R,** Criminal Appeal No. 428 of 2016, **Mustapha Khamis v. R,** Criminal Appeal No. 70 of 2016 and **Hassan Bundala Swaga v. R,** Criminal Appeal No 416 of 2014 (all unreported). For instance, in **Hassan Bundala Swaga (supra),** on the same aspect, this Court stated that:

> *"It is now settled law that as a matter of general principle this Court will only look into matters which came up in the lower courts and were decided, and not on new matters which were not raised nor decided by neither the trial court nor the High Court on appeal."*

For that reason, we agree with Mr. Mwita and we decline to consider for determination, the merits or otherwise, of the fifth ground of appeal, because this Court has no jurisdiction to entertain it.

The learned Senior State Attorney therefore argued the remaining seven grounds. He canvassed all seven grounds under one umbrella of the first ground of appeal which is a complaint that the case was not proved

beyond reasonable doubt. In resolving this appeal, we will adopt the same approach as the issues raised in each ground touch on evidence.

Generally, in this appeal, the appellant is complaining against the decision of the High Court for having upheld a conviction and sentence based on the case which was decided by relying on the evidence that had issues of sufficiency, credibility, weight, and reliability. The other aspect complained of particularly in ground two, is that the trial court did not consider the appellant's defence evidence.

In this appeal, Mr. Mwita without referring to any particular grounds of appeal, submitted that the case at the trial was proved beyond reasonable doubt because, **one,** at page 11 of the record of appeal the victim, while proving her age, testified that she was born on 11th January 2005 and she also explained how the appellant raped her in the woods in the neighbourhood of the school as she was going to a milling machine. As for the credibility, the learned Senior State Attorney stated that the trial magistrate assessed credibility of witness and came up with a conclusion that the prosecution witnesses were credible as indicated at page 49 of the record of appeal. In this respect he referred us to the case of **Elisha Edward v. R,** Criminal Appeal No. 33 of 2018 (unreported) where this

Court held that issues of credibility of a witness are matters in the domain of the trial court.

Two, as for the complaint that PW1, unduly delayed to report the incidence, because she reported it about ten days after the crime was committed, Mr. Mwita submitted that, the victim did not report because, before the appellant was to leave the scene of crime after he committed the offence, he issued a stern warning that he would kill her should she disclose what she had gone through to any third party. That, according to Mr. Mwita, was sufficient explanation as to why the victim did not disclose the incidence as soon as it was committed.

Three, the learned Senior State Attorney contended that the appellant committed the offence because even the evidence of PW3, PW4 and PW5, was that the appellant admitted to commit the offence of raping the victim.

Four, as for the complaint that the PF3 was tendered by a person who did not prepare it, the learned Senior State Attorney submitted that at pages 49 to 50 of the record of appeal, the trail court did not accord any weight to that medical exhibit. He argued that PF3 was not the basis of the decision of the trial court.

Five, he submitted finally that the allegations that the appellant's defence evidence was not considered has no basis because the same was analysed at pages 48 and 49 of the record of appeal and it was found to be of no weight at all. In essence, the learned Senior State Attorney was of the view that the prosecution case was proved beyond reasonable doubt and he finally implored us to dismiss the appeal for want of merit.

In rejoinder, the appellant alleged to be unaware of the offence for which he was serving the sentence in prison. He beseeched us to critically review his grounds of appeal and fault the decision of the High Court and ultimately set him free.

At the outset, to put ourselves in a proper alignment as we start to determine the appeal, we wish to highlight one underlying feature of the offence for which the appellant was charged. According to the charge sheet, the appellant was charged under sections 130(1) and (2)(e) and 131(1) of the Penal Code. That means the appellant was charged for the offence of statutory rape, which is described generally as having carnal knowledge of girl or woman of below 18 years. The unique character of the offence is that, the defence of consent of the victim is not available to the suspect. Section 130(1)(2)(e) of the Penal Code, which creates the

offence of statutory rape for which the appellant was charged provides as follows:

> *"(2) A male person commits the offence of rape if he has sexual intercourse with a girl or a woman under circumstances falling under any of the followlng descriptions:*
> *(a) to (d) N/A*
> *(e) with or without her consent when she is under eighteen years of age, unless the woman is his wife who is fifteen or more years of age and is not separated from the man."*

In an endeavour to describe it, this Court in the case of **George Claud Kasanda v. R,** Criminal Appeal No. 376 of 2017 (unreported), had this to say:

> *"In essence that provision (section 130(2)(e) of the Penal Code) creates an offence now famously referred to as statutory rape. It is termed so for a simple reason that it is an offence to have carnal knowledge of a girl who is below 18 years whether or not there is consent. In that sense age is of great essence in proving such an offence."*

In this appeal, the appellant was charged for that offence because according to the charge sheet, the victim was a young girl of 12 years at the time the offence was committed on 28th September 2017. In statutory

rape proof of age is of great essence, without which the case has to fail. On the aspect of age in statutory rape cases, this Court, in the case of **Solomon Mazala v. R**, Criminal Appeal No. 136 of 2012 (unreported), held that:

> *"The cited provision of law makes it mandatory that before a conviction is grounded in terms of section 130(2)(e), above, there must be tangible proof that the age of the victim was under eighteen years at the time of the commission of the offence....."*

There are other countless decisions of this Court on the subject including, **Winston Obeid v. R,** Criminal Appeal No. 23 of 2016, **Edson Simon Mwombeki v. R**, Criminal Appeal No. 94 of 2016, **Alyoce Maridadi v. R**, Criminal Appeal No. 208 of 2016 and **Alex Ndendya v. R**, Criminal Appeal No. 340 of 2017 (all unreported), just to mention, but a few.

As it may be noted, one of the complaints of the appellant particularly at ground 8 was that age was not proved. That is the point we will start with. At page 11 of the record of appeal PW1, the victim of the assault, testified as follows on 13th February 2018:

"I am 13 years old. I was born on 11/01/2005. I am a student at Ntonzo Secondary School. I am in form one (1)."

We must also state here that, under the law, evidence on age of the victim may be tendered by the victim. That is what was decided by this Court in the case of **Isaya Renatus v. R**, Criminal Appeal No. 542 of 2015 (unreported), where we observed that:

"We are keenly conscious of the fact that age is of great essence in establishing the offence of statutory rape under section 130(1)(2)(e)...the evidence as to proof of age may be given by the victim, relative, parent, medical practitioner or where available, by the production of a birth certificate."

In this case PW1, being the victim of the offence, her evidence on age is enough to dispose of the complaint of the appellant as her age was 12 years at the time she was sexually abused. On that score, we are in agreement with Mr. Mwita that age of the victim was proved at the trial and the complaint in that respect is misconceived.

The other complaint of the appellant was that the evidence of the victim was not credible because, she did not report the incidence or mention the appellant as her aggressor at the earliest possible

opportunity. Admittedly, in terms of this Court's decisions in **Bakari Abdallah Masudi v. R,** Criminal Appeal No. 126 of 2017 and **Jaribu Abdallah v. R**, [2003] TLR 271 (both unreported) and many others, the fact that a witness mentions the suspect at the earliest possible opportunity constitutes an assurance of the impeccable credibility of that witness. However, in this case, at page 12 of the record of appeal, the victim offered the reason why she would not speak out as soon as the offence was committed. This was her evidence:

> *"At home I met my sister Martha but I was afraid to tell Martha because Rafael told me that if I would tell anybody he would stab me with a knife."*

PW1 maintained that position even during cross examination where she told the appellant that she did not report the incidence in time because he threatened to stab her with a knife. That was the reason which was offered as to why it took her over a week to disclose the details of the incidence to a third party. In our view, that reason is sound.

The appellant was also aggrieved by the decision of the High Court allegedly because, that first appellate court failed to note that the trial court relied on a PF3 which was tendered by a person who was not its maker. We have carefully revised the judgment of the trial court as indicated above, and have noted as submitted by Mr. Mwita that the trial

court did not, and rightly so, in our view, accord any weight or credibility to the evidence of the medical expert for the court stated at page 50 of the record as follows:

> *"This court has also considered the PF3 of the victim (Exhibit P1) which opined that there was no signs of rape but this is just an opinion of the doctor who was not present at the scene of crime. This opinion also does not bind me.....It should also be noted that the opinion was made after lapse of more than ten days that is from 28.09.2017 to 10/10.2017, when the victim was examined by the doctor. In my view due to the lapse of time it was difficult for the doctor to find any signs of rape into the victim's vagina..."*

The above observation of the trial magistrate clearly discredits the medical evidence tendered before the court. The trial court cannot be said that it relied on such evidence to hold the appellant liable. In the circumstances, we agree with Mr. Mwita that the appellant was convicted based on some other evidence but not that of the medical expert.

There was also a complaint that the evidence of PW1, being a child of tender age, was unlawfully taken for the question she was asked before she gave her evidence was not recorded. According to section 127(1) of the Evidence Act [Cap 6 R.E. 2019] (the Evidence Act), every person is

entitled to give evidence under the law unless the court thinks by reason of tender age and other factors, not relevant to this judgment, a witness has no capacity to testify. That section provides:

> *"127.-(1) Every person shall be competent to testify unless the court considers that he is incapable of understanding the questions put to him or of giving rational answers to those questions by reason of tender age, extreme old age, disease (whether of body or mind) or any other similar cause."*

However, subsection (2) of the above section provides on what the court should do, in case a witness is a child of tender age, an apparent age of below fourteen years. Section 127(2) of the Evidence Act, provides that:

> *(2) A child of tender age may give evidence without taking an oath or making an affirmation but shall, before giving evidence, promise to tell the truth to the court and not to tell any lies."*

In this case, at page 11 of the record of appeal, this is what transpired when the trial court was holding proceedings in camera:

> *"**PW1:** MW, 13 YRS, STUDENT RESIDENT AT NTANGANO, CHRISTIAN*

Court: *PW1 is a child of tender age hence she is not sworn but she is asked to promise to tell this court nothing but the truth and she replies:*

PW1: *I promise to tell this court only the truth.*

Sgd: V. J. Mlingi – RM
13/02/2018".

The complaint of the appellant is that the question that was asked to her before she was to promise to tell the truth was not recorded. We understand the concern of the appellant, but what we have found in the law is that the child of tender age must promise to tell the truth and not lies, before his evidence can be recorded. This has been the position of this Court in many cases including **Msiba Leonard Mchere Kumwaga v. R**, Criminal Appeal No. 550 of 2015 (unreported) where this Court observed:

" ... Before dealing with the matter before us, we have deemed it crucial to point out that in 2016 section 127 (2) was amended vide Written Laws Miscellaneous Amendment Act No. 4 of 2016 (Amendment Act). Currently, a child of tender age may give evidence without taking oath or making affirmation provided he/she promises to telll the truth and not to tell lies."

Still on that amendment of the Evidence Act, this Court stated in the case of **Yusuph Molo v. R**, Criminal Appeal No. 343 of 2017 (unreported) that:

> *"What is paramount in the new amendment is for the child before giving evidence to promise to tell the truth to the court and not to tell lies. That is all what is required. It is mandatory that such a promise must be reflected in the record of the trial court. If such a promise is not reflected in the record, then it is a big blow in the prosecution case."*

The decision in **Msiba Leonard Mchere Kumwaga (supra)** was the basis of another decision in **Godfrey Wilson v. R,** Criminal Appeal No. 168 of 2018 (unreported) on the same subject.

Considering the above decisions, what seems to be insisted upon and therefore of key importance is for the child witness to promise not to tell lies but the truth. We have not found a decision where this Court is insisting that a trial court must record the question it asks the child before the latter can promise to tell the truth and not lies. In any event, even if there was to be a requirement to record the exact question put to the child before he or she can undertake to tell only the truth, an omission to comply with such a requirement would have been an omission curable

under section 388 (1) of the CPA. As the trial magistrate complied with the relevant section of the Evidence Act in respect of receiving evidence of a child of tender age, we find no substance in the appellant's complaint that the court was supposed to mandatorily record the question.

The appellant also complained that his defence evidence was not considered. Before we make a decision on whether the defence was adequately considered or not, let us reproduce his full defence because its substance is not a long text, it is in two paragraphs each with three lines in the record of appeal. This is what he stated:

> *" Your honour I have a wife who satisfy me. It is impossible for me to rape a young girl. If it was true that the victim was raped, she would have bruises and blood in her vagina.*
> *Also, we have a quarrel with the family of Martha because we had fined the previous time (sic). So, this might be a cause. That is all."*

In cross examination he said:

> *"I have a quarrel with the parents of the victim because it happened to fined (sic) them when the daughter of my brother was found making sexual intercourse with the young brother of the victim's father.... My brother gave them a fine of Tshs 700,000/= the said fine was paid by the young father (sic) of the victim's father, Mwasota."*

Whether the above evidence was considered or not, the record at page 48 of the record of appeal which is part of the judgment of the trial court is very clear and we will let it speak on itself:

> *"The accused person denied the offence and testified further that the charge against him was concocted because there was a dispute between his brother's family and the victim's family. This Court has carefully and dispassionately gone through this allegation by the accused person but with due respect to the accused person I find that the said allegation by the accused person to be too remote. This is so because if the dispute was between the family of the accused's brother and that of the victim's brother, why the victim's family would concoct this case against the accused while his brother's family still exists."*

In our view, the above constitutes the analysis of the evidence complained of and the reason for not attaching credibility to the said evidence. We thus do not agree that the trial court did not analyse the entire evidence for the defence.

We however agree with the appellant that both the trial court and the first appellate court did not consider the defence of DW2, Sara Raphael and DW3, Sylvester Alen Wetengile the appellant's wife and the

Hamlet Chairman of Iwanda Hamlet, respectively. So, as both the courts below, did not consider the defence of these two witnesses, this Court has mandate to consider that evidence, evaluate it and come to its own decision, if necessary. That was the position as the per the case of **Hassan Mzee Mfaume v. R,** [1981] TLR 167, where it was held that:

> *"Where the first appellate court fails to re-evaluate the evidence and to consider the material issues involved on a subsequent appeal the court may re -evaluate the evidence in order to avoid delays or may remit the case back to the first appellate court."*

We have thoughtfully considered this issue in light of the above decision, and we think remitting the whole matter for consideration of one small issue like considering the evidence of DW2 and DW3 might result into an unnecessary delay. Therefore, we decided to take matters in our own hands and see what did these witnesses say in defending the appellant. We will start with DW2, the appellant's wife, who stated that when they were preparing to go to church, the police came, arrested the appellant and took him to the Police Station and she did not know why did they arrest him. In respect of the defence that there were grudges between her husband and the victim's father, here is what the appellant's wife testified during cross examination:

"I have not heard that my husband has any quarrel with anybody. I have lived with my husband for more than ten years."

In our view, if there was a grudge of the magnitude capable of one framing a case against her husband, in all reasonableness, DW2 as the wife of the appellant with whom they had lived for ten years, would by all means know. But that was not the case.

DW3, was a local leader who was called to defend the appellant, testified at page 36 of the record of appeal that two members of the village security committee went to his place and informed him that they had been sent by the Ward Executive Officer to arrest the appellant. He took them to the appellant's place and the latter arrested the appellant but he did not know why he was needed. On the issues of grudges, DW3 stated:

"There is no quarrel between the accused and any other person in the village. I know the accused for a long time."

The evidence of DW2 and DW3 was neutral to the appellant's defence. The evidence did not have anything valuable to absorb the appellant from guilt or corroborate his own because**, first** none of the two witnesses testified to the effect that the appellant did not rape the victim,

second none of them stated at least that at the time the offence was being committed was with the victim and **third**, none of them supported the appellant that he had any grudge with any relative of the victim. In short, none of the two witnesses had any useful evidence favouring the appellant in his rape case.

Finally, we wish to observe that even if the two lower courts would have analysed the evidence of the two witnesses, they would not have arrived at a different finding. In the circumstances, the complaint of the appellant that the defence was not analysed is accordingly discharged, albeit with no difference in outcome.

The final complaint of the appellant in this appeal, was that the offence of rape was not established, because the evidence of PW1, PW2, PW3, PW4, PW5 and PW6 was not credible. In resolving this ground of appeal, we will start with principles guiding courts in determining credibility of witnesses, then we will examine the evidence of the victim in the context of the second ingredient of statutory rape which is penetration of the suspect's sexual organ into the victim's. From there, we will proceed to discuss the credibility of other witnesses except PW6 which was hearsay and was not relied upon by the trial court in its judgment.

It is a settled principle of law that, the best test of the quality of the evidence and its reliability is based on or depends on the credibility of the witness adducing it, see **Yohana Msigwa v. R,** (1990) T.L.R. 143, **Anangise Masendo Ng'wang'wa v. R,** (1993) T.L.R. 202 and **Richard Mtengule and Another v. R,** (1992) T.L.R. 5.

Generally, assessment of credibility of a witness, is the domain and territory of the trial court. Credibility of a witness can be established or determined, **first** by the trial court examining the demeanour of the witness. Credibility of a witness based on the demeanour factor, can only be assessed by the trial court and never any appellate court for the simple reason that it is that court that has the advantage of seeing the witness in the witness box and assess his or her body language and note the confidence or lack of it in what the witness says at the trial. **Second,** by the trial court and even appellate court by studying the coherence of the evidence of one witness and that of the other and **third** by considering the evidence of one witness against that of others including evidence of the accused person. That is as per the position of this Court, in various decisions including **Elisha Edward v. R,** Criminal Appeal No. 33 of 2018 and **Shabani Daudi v. R,** Criminal Appeal No. 28 of 2001 (both unreported). For instance, in **Shabani Daudi,** this Court stated:

"Credibility of a witness is the monopoly of the trial court but only in so far as demeanour is concerned. The credibility of the witness can also be determined in two other ways. One, when assessing the coherence of the testimony of that witness and two, when the testimony of that witnesses is considered in relation to the evidence of other witnesses including that of the accused person. In those two occasions, the credibility of a witness can be determined even by a second appellate court when examining the findings of the first appellate court."

With those principles at the back of our mind, we can now proceed to discuss, albeit briefly, the evidence of PW1, without touching on her age, because we already discussed it exhaustively earlier on. Together with proof of age, the other aspect that needs to be proved in offences of rape is penetration of the male sexual organ into that of the victim, irrespective of its extent, as required by section 130(4) of the Penal Code which provides as follows:

"(4) For the purposes of proving the offence of rape-

(a) penetration however slight is sufficient to constitute the sexual intercourse necessary to the offence;"

As for this aspect of the offence, that is penetration, PW1 at page 11 of the record of appeal testified that on 28th September 2017, she was coming from school to attend tuition at around 6.00 o'clock in the evening and was heading to the milling machine where she would get flour. Before she could get there, on the way she met the appellant. The appellant got hold of her, closed her mouth and pulled her in the wood near the school, fell her on the ground, lifted up her skirt, tore her under pant such that the girl was rendered nude. The appellant, according to PW1, withdrew his manhood and inserted it in her private parts. She felt pain as that was happening. Thereafter, the appellant left the poor girl who mobilized herself and went to the milling machine to take the flour that her grandmother had told her to come back home with in that evening. She later disclosed what happened to Martha from whom the story spread leading to the appellant's arrest and ultimate arraignment and other orders including conviction and sentence as earlier on indicated.

The trial Court relying on the case of **Selemani Makumba v. R,** [2006] TLR 379, entirely agreed with the evidence of PW1 and her credibility at page 49 of the record of appeal. So we do not agree that the trial court did not assess credibility of PW1 or that the court's assessment of it was questionable. We now move to the evidence of PW2 and other witnesses.

PW2 is Martha Martin who curiously noted the abnormal movement of the victim on 7th October 2017, she testified that after she was told by the victim that the appellant raped her, she started to spread the information as testified by the victim. This evidence corroborates that of the victim that the first person she told was Martha Martin.

The evidence of PW3, Teresia James, a neighbour, PW4, Augustino Paulo Lyambilo, the Village Chairman and PW5, Varian Edwin Mbilikile, the Hamlet Secretary is common on one aspect. That the appellant admitted to have raped the victim and that, he even pleaded for apology but no one was ready to grant the pardon as the girl was raped. The trial court in according weight and credibility to this evidence of PW3, PW4 and PW5 at pages 48 to 49 stated that, there was no indication that any of the witness had any grudge with the appellant and that the appellant did not state that there was any force or coercion applied on him before he could admit the offence and seek apology. The trial court, and properly so, in our view, believed the evidence of these witnesses as credible. The evidence of these three witnesses bore coherence with each other's and cannot easily be faulted. In addition, the evidence of these three witnesses corroborated the evidence of the victim who alleged to have been raped by the appellant.

In view of the above discussion, we find no fault or error with the decision of the High Court which upheld that of the trail court. In the circumstances, we hold that the complaint of the appellant that the evidence of the PW1, PW2, PW3, PW4 and PW5 was not worthy of belief, is a misconception and we dismiss it, except for that of PW6 who tendered a PF3 for identification, which evidence we have indicated that it was not the basis of the decision in the trial court.

In the event, for the foregoing reasons, this appeal fails and we dismiss it in its entirety for want of merit.

DATED at **MBEYA**, this 25th day of February, 2022

R. K. MKUYE
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

P. F. KIHWELO
JUSTICE OF APPEAL

The Judgment delivered this 25th day of February, 2022 in presence of the appellant in person, represented by Ms. Nancy Mushumbusi, 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

In view of the above discussion, we find no fault or error with the decision of the High Court which upheld that of the trail court. In the circumstances, we hold that the complaint of the appellant that the evidence of the PW1, PW2, PW3, PW4 and PW5 was not worthy of belief, is a misconception and we dismiss it, except for that of PW6 who tendered a PF3 for identification, which evidence we have indicated that it was not the basis of the decision in the trial court.

In the event, for the foregoing reasons, this appeal fails and we dismiss it in its entirety for want of merit.

DATED at **MBEYA**, this 25th day of February, 2022

R. K. MKUYE
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Z. N. GALEBA
JUSTICE OF APPEAL

P. F. KIHWELO
JUSTICE OF APPEAL

The Judgment delivered this 25th day of February, 2022 in presence of the appellant in person and Ms. Nancy Mushumbusi, 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