IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

(CORAM: WAMBALI, J.A., MWANDAMBO, J.A. And MWAMPASHI, J.A.)

CRIMINAL APPEAL NO. 92 OF 2020

SOMA BREKI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the decision of the Resident Magistrates' Court of Mbeya with Ext. Jurisdiction at Mbeya)

(Chaungu, SRM, Ext. Jur)

dated the 08th day of November, 2019

in

Criminal Appeal No. 16 of 2019

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JUDGMENT OF THE COURT

29th November & 8th December, 2022

MWAMPASHI, J.A.:

In the instant appeal, the appellant, Soma Breki, is challenging the judgment of the Resident Magistrates' Court of Mbeya with Extended Jurisdiction, at Mbeya (Chaungu, SRM Ext. Jur) (the 1st appellate court) in Criminal Appeal No. 16 of 2019 which upheld the conviction and sentence entered by the District Court of Mbarali at Rujewa (the trial court) in Criminal Case No. 260 of 2017. Before the trial court, the appellant was charged with the offence of rape contrary to sections 130 (1) (2) (b) and 131 (1) of the Penal Code. According to the particulars of the offence, on 10.12.2017 at about 00:00 hours, the appellant had sexual intercourse with "K.M" (name withheld), a 40 years old woman, hereinafter to be referred to as the victim or PW1, without her consent. Upon conviction, the appellant

was sentenced to 30 years imprisonment. In addition, he was ordered to pay a sum of Tshs. 1,000,000/= to the victim as compensation.

In its endeavour to prove the charge against the appellant who had entered a plea of not guilty, the prosecution relied upon the evidence from five (5) witnesses and one exhibit, to wit, a PF3, which was tendered and admitted in evidence as exhibit PE1. The appellant was a sole witness in his defence.

Briefly, the evidence led by the prosecution against the appellant, was to the following effect; PW1 used to live at Matebete village in Mbarali District with her alleged blind husband and two grandchildren, namely; Ng'ocha (PW2) and Wande. While PW1 and her husband used to sleep in the bedroom, her grandchildren slept at the sitting room. It is also in evidence that, at night, the door to the house had to be left half open because PW1 and her family used to share the house with goats.

At the night of 10.12.2017 at about 00:00 hours while PW1 was asleep on the floor and her husband on bed, she felt someone holding her and upon getting awake she found that it was her neighbour, the appellant. She allegedly saw and recognized him because there was solar light in the room. She screamed and raised an alarm and the duo confronted each other. In the course of that confrontation, PW1 bit the appellant on his hand but the appellant allegedly managed to rape her. There is also evidence that one of the grandchildren, that is, PW2, heard the screams

and the alarm raised by PW1 and when he got in the bedroom, he took hold of the appellant. This piece of evidence from PW2 formed part of the evidence on which the appellant's conviction was grounded. It was also testified by PW1 that when the street chairman and some other villagers came, they arrested the appellant and together they went to the area office, then to the police station where she was issued with a PF3 before she went to Chimala Mission Hospital.

The first neighbour to respond to the alarm raised by PW1 was Mageuse Njile (PW3) whose evidence was to the effect that when he got there, he found PW1 outside the house and was told by her that the appellant had raped her. By that time, the appellant was being locked in the house. PW3 had to call the street chairman, one Nyanda Kisinza (PW4) who came and ordered the appellant to be brought outside. Thereafter, PW4 went to the village office and when he came back, he was with militia men who arrested the appellant and sent him to the village office.

The evidence from PW4 was to the effect that PW1 was a resident of his street and that when he got at PW1's house he found the appellant under arrest. He then called the village executive officer who sent militia men who came and collected the appellant in the morning. He insisted that they kept the appellant under arrest waiting for the militia men until in the morning. He also testified that PW1's husband when the incident was happening was sleeping on the bed as he had brain problem for a long

time. PW4 testified further that when they interrogated the appellant on the commission of the offence he said that it was bad luck due to alcohol.

The last piece of evidence for the prosecution case came from Dr. Peter Seif Kigombola who testified as PW5 telling the trial court that he examined PW1 on 10.12.2017 and observed that she had sustained skin bruises on her body and also that her vagina was discharging bad odour fluids with remarkable fluid stains on her vagina and thighs. He concluded that PW1 had been raped and a PF3 filled by him to that effect was tendered and admitted in evidence as exhibit PE1.

In his sworn defence, the appellant, denied to have raped PW1 who he did not even know. He stated that he was arrested at his house by one Maghembe Malulu and his colleagues at about 02:00 hours and not at PW1's house. He further claimed that Maghembe Malulu and his team beat, tortured, tied his legs and hands and took from him Tshs. 40,000/=. When his ten-cell leader came, they told him that the appellant had been found with a wife of someone. Thereafter, he was sent to the police station and then to the hospital.

At the height of the trial, having evaluated the evidence for both sides, the trial court found that the charge against the appellant had been proved to the hilt and it, accordingly, convicted and sentenced him as alluded to above. On appeal to the 1st appellate court, the trial court's

findings and decision were upheld hence the instant second appeal on seven grounds which are paraphrased as hereunder:

1. *That the learned magistrate with Ext. Jurisdiction erred in law and fact in dismissing the appellant's appeal while the charge was not proved beyond reasonable doubt.*

2. *That PW2's evidence was taken in contravention of section 127 (2) of the Evidence Act [Cap 6 R.E. 2002].*

3. *That the evidence given by PW3 and PW4 to the effect that the appellant admitted to have raped PW1 under the pretext of being drunk and bad luck was not substantiated by any recorded statement.*

4. *That the case was not investigated and no investigation officer from the office of the C.I.D was called as a witness.*

5. *That the appellant was not positively identified at the scene of crime.*

6. *That taking into account that PW1 had a husband who she had been sleeping with on the material night, the doctor's evidence to the effect that PW1 was raped is doubtful.*

7. *That the defence evidence was wrongly disregarded.*

When the appeal came before us for hearing, the appellant appeared in person unrepresented whereas Mr. Davice Msanga, learned State Attorney, appeared for the respondent Republic.

Upon being invited to argue his grounds of appeal, the appellant implored us to consider his grounds of appeal and find them meritorious. He contended that he did not commit the offence and also that the case against him was not proved beyond reasonable doubt. He thus prayed for the appeal to be allowed.

Mr. Msanga began by expressing his stance that he was not supporting the appeal. He then pointed out that grounds 3, 4 and 6 of appeal are new and not based on matters of law. It was contended by him that since the said three grounds were not raised before the 1st appellate court and are not on matters of law, they should be disregarded as the Court has no jurisdiction to entertain such grounds.

Understandably, the appellant, being a lay person, had nothing in response to the above legal issue raised by Mr. Msanga.

We agree with Mr. Msanga that it is now settled that as a matter of general principle, this Court is precluded from entertaining grounds which are not on matters of law but on purely factual matters that were not even raised and determined by the 1st appellate court. See- **Abdul Athuman v. Republic** [2004] T.L.R. 151, **Jafari Mohamed v. Republic,** Criminal Appeal No. 112 of 2006, **Hassan Bundala @ Swaga v. Republic**,

Criminal Appeal No. 386 of 2015, **Galus Kitaya v. Republic,** Criminal Appeal No. 196 of 2015 and **Godfrey Wilson v. Republic,** Criminal Appeal No. 168 of 2018 (all unreported). Having closely examined the record of appeal before us and considered the nature of the complaints being raised in grounds 3, 4 and 6, we agree with Mr. Msanga and accordingly disregard them without much ado. In this regard, this appeal will be determined by considering grounds 1, 2, 5 and 7.

We should also point out, at the outset, that since, as we have alluded to above, grounds, 1, 2, 5 and 7 are central and it is upon those grounds that this appeal will be disposed of, we find it convenient and appropriate to approach and determine them in the following manner; We will initially deal with ground 2 followed by grounds 1, 5 and 7 which will be dealt with conjointly.

Beginning with ground 2 of the appeal, in which it is complained that PW2's evidence was taken in contravention of section 127(2) of the Evidence Act (Chapter 6 of the Laws) it was readily conceded by Mr. Msanga that the evidence of PW2, a witness of tender years, was indeed recorded in contravention of the relevant law. He contended that before taking his evidence, the trial court did not require PW2 to promise to tell the truth and not to tell lies. It was therefore argued by Mr. Msanga that the evidence of PW2 should be disregarded. There was nothing from the

appellant in rejoinder in respect of the submissions made by Mr. Msanga on this ground.

We are in agreement with Mr. Msanga that ground 2 of appeal is meritorious. According to the record, PW2, who was 12 years old when his testimony was recorded by the trial court, was just sworn and his testimony recorded without being firstly examined and caused to promise to tell the truth and not to tell lies as required by section 127 (2) of the Evidence Act. From the record, there is no way it can be ascertained that PW2 was a competent witness whose evidence could be taken under oath or without and that he promised to tell the truth and not to tell lies. The Court was faced with a similar scenario in the case of **Masanja Makunja v. Republic,** Criminal Appeal No. 378 of 2018 (unreported) where, as it was in the instant case, a 14 years old child witness was sworn and her testimony was recorded without her competence having first been ascertained. In invalidating the evidence, the Court stated that:

> *"In our case, to the contrary, PW1 was just sworn in and her testimony taken. No preliminary inquiry was made whether by conducting voire dire test or by the trial magistrate posing simple questions to her so as to find out if she understood the nature of an oath. There is nothing, in the present circumstances, from which it can be inferred or deduced that the victim was a competent witness let alone bound from not telling lies... We,*

therefore hold that PW1's evidence was taken in violation of section 127(2) ...for want of promise to tell the trial court only the truth and not lies. The evidence is invalid hence had no evidential value".

Guided by the above decision of the Court, we find that since it is clear in the instant case that PW2's evidence was received in violation of section 127(2) of the Evidence Act, the same is invalid with no evidential value. We accordingly discount the evidence of PW2 in determining this appeal. Ground 2 is therefore allowed.

On ground 7 of the appeal, which is to the effect that the appellant's defence evidence was disregarded, initially Mr. Msanga was of the view that looking at pages 27, 28, 47 and 48 of the record of appeal, there was an attempt by the trial court and the 1st appellate court to evaluate the appellant's defence evidence. However, upon being probed by the Court, he conceded that the defence evidence was not properly evaluated. Nevertheless, he quickly pointed out that, considering the cogent evidence against the appellant on record, the failure is curable as it did not prejudice the appellant. In the circumstances, he urged us to step into the 1st appellate court's shoes and consider the appellant's defence evidence.

As to the complaint on ground 7 that the appellant's defence evidence was wrongly disregarded, we again agree with Mr. Msanga that, although it cannot be said that the defence evidence was not totally considered by the two lower courts, it is clear that there was no proper evaluation of the

evidence neither by the trial court nor by the 1st appellate court. What the trial court did was mostly to reproduce what the appellant said in his defence. Even when the complaint was placed before the 1st appellate court, the conclusion reached was that the trial court properly considered the defence evidence. Under these circumstances, as Mr. Msanga has also urged us to do, we are compelled to perform the duty which the two lower courts failed to perform. In his defence evidence, apart from maintaining his denial that he did not commit the alleged rape, the appellant claimed that he was not arrested at PW1's house at about 00:00 hours but it was at his house at about 02:00 hours while asleep on accusations that he had been found with someone's wife. We find that from the nature of that defence, the consideration of the defence which is the centre of the complaint in ground 7 should better be addressed whilst determining grounds 1 and 5.

Before venturing into the determination of grounds 1 and 5, we should firstly see what was the submissions by Mr. Msanga on those two grounds. As to ground 5, Mr. Msanga argued that the complaint is baseless because he was positively identified by recognition not only by PW1 but also by PW3 and PW4 whose evidence was to the effect that the appellant was arrested at PW1's house. He also argued that the appellant was confined in PW1's house and put under arrest till in the morning when the militia men collected him. To cement his argument that the appellant was positively

identified by recognition at the scene of crime, Mr. Msanga referred us to the decisions of the Court in **Fadhil Gumbo @ Malota and 3 Others v. Republic** [2006] T.L.R. 50 and **The Director of Public Prosecutions v. Daniel Wasonga,** Criminal Appeal No. 64 of 2018 (unreported).

Finally on the 1st ground of appeal, it was submitted by Mr. Msanga that the charge against the appellant was proved to the hilt. He contended that the best evidence came from PW1 who testified that the appellant had sexual intercourse with her against her will. It was further argued by him that PW1's evidence was supported by the evidence of PW3 and PW4 who arrested the appellant at PW1's house. Mr. Msanga insisted that PW1's statement that the appellant had sexual intercourse with her sufficiently proved the fact that her vagina was penetrated by the appellant. On this, Mr. Msanga placed reliance on the decision of the Court in **Hassan Kamunyu v. Republic,** Criminal Appeal No. 277 of 2016 (unreported).

The appellant had nothing of substance in rejoinder. He only asked the Court to allow the appeal basing on his grounds of appeal.

As we have earlier alluded to, grounds 5 and 7 in which it is complained that the appellant was not positively identified at the scene of crime and that the defence evidence was disregarded, are going to be addressed conjointly with ground 1 of the appeal, which we consider to be central to the determination of this appeal. The main issue for our determination is whether, having discounted PW2's evidence, the remaining

evidence, is sufficient to support the appellant's conviction. In other words, since part of the evidence on record, particularly the defence evidence was not properly evaluated and considered by the lower courts, as we have earlier found, the task before us is to re-evaluate not only the defence evidence but the entire evidence on record and see whether the appellant's conviction was grounded upon sufficient evidence.

At this juncture, before we proceed, we must state that we are mindful of the fact that the two lower courts concurrently found that the evidence of PW1, PW3 and PW4 that the appellant was found at PW1's house and that he raped PW1, was strong, credible and reliable. The general rule is that where there is concurrent findings of facts by two lower courts, a second appellate court can rarely interfere with such findings unless there is a serious misdirection, non-direction, a violation of any principle of law or misapprehension of the evidence leading to miscarriage of justice. See- **Jafari Mohamed v. Republic** (supra), **Musa Mwaikunda v. Republic** [2006] T.L.R. 387, **Edwin Isdori Elias v. Serikali ya Mapinduzi Zanzibar** [2004] T.L.R. 297 and **Rashid Ramadhani Hamis Mwenda v. Republic,** Criminal Appeal No. 116 of 2008 (unreported).

We are also live to the trite principle of law that the best evidence in rape cases has to come from the victim, and further, to the principle that every witness is entitled to credence unless there are good reasons for not

believing him (see- **Goodluck Kyando v. Republic** [2006] T.L.R. 363). The Court is also aware of the settled principle that apart from the fact that the credibility of a witness can be determined based on demeanour which is exclusively in the domain of the trial court, credibility can also be determined by assessing the coherence of the testimony of the witness. See- **Nyakunga Boniface v. Republic**, Criminal Appeal No. 434 of 2017 (unreported). It should also be borne in mind that in proving the offence of rape in cases where the victim is an adult, as it is in the instant case, it must be proved beyond reasonable doubt that there was penetration and also that consent was lacking.

Since, as we have earlier alluded to, the determination of the issue whether there is sufficient evidence upon which the appellant's conviction was grounded entails re-evaluation of the evidence of the prosecution's key witness, that is, the victim (PW1), we find it appropriate, for ease of reference, to reproduce her evidence *in extenso* as hereunder:

> *"I live at [Matebete] with my husband. I have four children. On 10/12/2017 I was sleeping at home in my room on the floor. My husband is sick from eyes, he slept on the bed. We sleep with two grandchildren, Ng'ocha and Wande. When I was sleeping, I saw a person squeezing me, that person is Soma. Soma is here before this court. (Here he is pointing to accused)*

In our room there is a solar light I saw him clearly. We confronted each other until I cut his hand, I raised alarm/Ngolo. I know Soma accused, before the court. We live in the same street. The accused did have sexual intercourse with me I started confronting him I bitten him on accused's left hand. (Court has seen marks of bites)

When I shouted the neighbours came and a lot of people came.

Ng'ocha were at the bedroom when he heard the noise. My grandchild, caught the accused and fell down. They caught the accused inside my bedroom. The chairman came, some people were gathered. We went to the area office then we went to Police Station we were given a PF3 and went to the Hospital. We went with Chairman/Street Chairman. The door was half open as we sleep with goats inside".

Guided by the earlier re-stated principles, we have subjected the above reproduced evidence of PW1 and the entire evidence on record to a very careful scrutiny in order to satisfy ourselves not only if it is coherent but also whether the ingredients of the offence of rape were proved beyond reasonable doubt. With due respect to the two lower courts, it is our finding that when the evidence given by PW1 and all circumstances of the case is considered, it becomes doubtful if PW1's vagina was really penetrated by the appellant and if so whether there was no consent.

The issue of penetration has extensively taxed our minds. However, after an in depth examination of PW1's evidence and all circumstances of the case, we have finally come to a settled mind that there was no sufficient evidence to prove beyond reasonable doubt that the appellant penetrated the vagina of PW1. It is also our considered view that, the two lower courts misapprehended the evidence on record including the defence evidence and as a result they failed to see not only that there was no sufficient evidence to prove the charge but also that the defence by the appellant raised reasonable doubt on the prosecution case. We will explain.

Firstly, we find that the evidence given by PW1 who was an adult, was too casual leaving a lot to be desired on the aspect of proving penetration. Her evidence does not give a clear picture as the actual point in time she was raped by the appellant. From her evidence, it is not clear at what time the sexual intercourse occurred. Was it at the time she became aware of the presence of appellant and when she screamed and raised an alarm or when she confronted and started fighting with the appellant? Based on her evidence it is also not clear whether by the time her grandson (PW2) heard the screams and alarm and rushed to the bedroom to her rescue the alleged rape by the appellant had been committed. We have failed to grasp from PW1's evidence the point in time when the appellant raped her.

Secondly, it is our view that, under the circumstances of this case, PW1's evidence proving that she was raped by the appellant was too general. As it can be clearly gleaned from her evidence reproduced above, PW1 just stated that *"the accused did have sexual intercourse with me"*. We are mindful of the position that in proving that there was penetration in rape cases, it is not necessary that the victim will graphically describe how exactly it was done as observed in **Joseph Leko v. Republic**, Criminal Appeal No. 124 of 2013, **Baha Dagari v. Republic**, Criminal Appeal No. 39 of 2014 and **Hassani Kamunyu v. Republic**, Criminal Appeal No. 277 of 2016, (all unreported). However, we are still of the considered view that under the circumstances of this case where the victim was an adult, further explanation on how and at what point in time she was penetrated ought to have been given by her. It was expected, for instance, that she would have explained whether she had slept naked and that the appellant encountered no hurdles in penetrating her or if she was not, how the appellant managed to penetrate her in that short moment, that is, between the time when she screamed and raised an alarm and when her grandson rushed to the bedroom to her rescue. Indeed, there is no evidence from PW1 on what was the reaction of her husband who was also present in the room though she stated that he had eye problems. In **Mattayo Ngalya @ Shaban v. Republic,** Criminal Appeal No. 170 of 2006 (unreported) the Court insisted that:

"For the offence of rape, it is of utmost importance to lead evidence of penetration and not simply to give a general statement alleging that rape was committed without elaborating what actually took place. It is the duty of the prosecution and the court to ensure that the witness gives the relevant evidence which proves the offence".

It is also our view that, when the whole evidence on record is properly evaluated, the appellant's defence that he was not arrested inside PW1's house, raised a reasonable doubt in the prosecution allegation that the appellant was arrested at the scene of crime. We note that according to the evidence on record, PW1, PW3 and PW4 gave contradictory evidence on what actually happened after the appellant had allegedly been found in PW1's house and confined therein. While PW3 stated that after the arrival of PW4 at PW1's house he ordered the appellant to be brought outside and that thereafter PW4 went to the village office before he came back with militia men who took the appellant to the village office; the evidence by PW4 is to the effect that after getting at PW1's house, he did not leave but he called the village executive officer by phone asking for militia men and that the militia men came in the morning and collected the appellant and sent him to the area office. He insisted that he and other villagers stayed at PW1's house with the appellant waiting for the militia men till in the morning. On her part, PW1 stated that after the arrival of PW4, the appellant was directly taken to the village office and then to the police.

According to the evidence of PW1 which we have reproduced above, she did not mention the presence of militia men at the scene. On the contrary, she testified that they went to the office and to the police with the street chairman.

It is clear therefore that the evidence by PW3 and PW4 on whether the appellant was taken away from PW1's house by the militia men on the same night or in the morning differs sharply and is questionable. This is material because in his defence the appellant insisted that he was not arrested at PW1's house but at his house while asleep and summoned to get out not on accusation of rape but on the accusations that he had been found with someone's wife. It is our considered view that the appellant's defence raised reasonable doubt on whether he was really arrested at the scene of crime which ought to have been resolved in his favour. The Court in **Yusuph Nchira v. Republic,** Criminal Appeal No. 174 of 2007 (unreported) while considering a similar situation stated that:

> *"The appellant had only to raise doubts on his presence at the scene of crime and the prosecution had to prove its case beyond reasonable doubt. The appellant's story need not be believed. He had only to raise a reasonable doubt and not to prove anything".*

The circumstances of this case, where PW1, PW3 and PW4 gave contradictory evidence on what really happened after the appellant had

allegedly been confined in PW1's house and where the alleged militia men who arrested the appellant and took him to the office and later to the police station were not called as witnesses, the appellant's defence that he was arrested at his house and not at PW1's house tainted and weakened the prosecution evidence on what really had happened. It should be borne in mind that the militia men who allegedly collected the appellant from the scene of crime and also the police officer to whom the appellant's case was reported at the police station were not called to testify. In our view had those witnessed been called to testify, they could have cleared that doubt on the matter. Stressing the need for the prosecution to call material witnesses, the Court in **Kisinza Richard v Republic** [1989] T.L.R. 143 stated thus:

> *"The prosecution is under a prima facie duty to call all material witnesses who from their connection with the prosecution in question are able to testify on material facts. If such witnesses are not called without sufficient reasons the court may draw an adverse inference to the prosecution".*

Other shortcomings in the prosecution evidence which if considered in isolation might be seen trivial but when looked at in conjunction with the above explained ailments, raise some doubts. In particular PW1's story about the involvement of PW1's husband who we are told was present in the bedroom when PW1 was allegedly being raped and when the whole

fracas was happening, does not feature anywhere in the prosecution evidence. It should be borne in mind that the evidence shows that PW1 was restrained and put under arrest in PW1's house till in the morning when he was collected by the militia men. We also note that while PW1 claimed that her said husband was blind, PW4 said he had brain problem. Whatever the case, there is no evidence that PW1's husband was incapacitated to the extent of having not sensed and heard what was allegedly happening in the bedroom between his wife and the appellant. PW1's husband was a material witness whom the prosecution ought to have called to testify. We wonder why he was not called as a witness or owing to his alleged health condition, his statement taken on the issue and why the evidence on record is so silent about him. The failure to call him and the alleged militia men entitles us to draw an adverse inference against the prosecution case.

We have also noticed that while the evidence shows that the appellant was arrested and taken to the police station on 10.12.2017 he was arraigned before the trial court on 27.12.2017. There is an unexplained delay of 17 days. Considering the fact that the appellant in his defence claimed to have been arrested for different accusations and not for raping PW1 who he claimed was not known by him, the unexplained delay to arraign him before the trial court is another thing that raises doubt on the

truthfulness of the case against him. Unfortunately, no body from the police testified concerning the arrest of the appellant.

The totality of the above demonstrated ailments in the prosecution evidence particularly in PW1's testimony, have left us with clouded minds as we do not see that the allegations that the appellant raped PW1 without consent were proved to the required standard. In the same vein, the contradictory evidence given by PW1, PW3 and PW4 concerning the incident of rape at the scene of crime raise doubts on their credibility and reliability. Moreover, the fact that some material witnesses were not called to testify for the prosecution, as we have observed above, makes it very difficult to conclude that the appellant was positively identified at the scene of crime. There was no sufficient evidence to prove that the appellant was really arrested at PW1's house and that he was positively identified at the scene of crime. In the circumstances, we find that the defence of the appellant was unjustifiably disregarded.

In conclusion, it is our considered view that the two courts below misapprehended the whole evidence on record for both sides of the case. As we have earlier stated, had the 1st appellate court evaluated the evidence on record properly, it could not have sustained the findings of the trial court that the appellant was guilty of the offence of rape. The doubts we have endeavoured to demonstrate above, ought to have been resolved in the appellant's favour. We are therefore, of the settled view that the

charge against the appellant was not proved beyond reasonable doubt. In the result, grounds 1, 5 and 7 of the appeal are accordingly allowed.

In the event and for the above reasons, we allow the appeal, quash the conviction and set aside the sentence and order imposed against the appellant. It is further ordered that the appellant be released forthwith from prison unless he is so held for any other lawful cause.

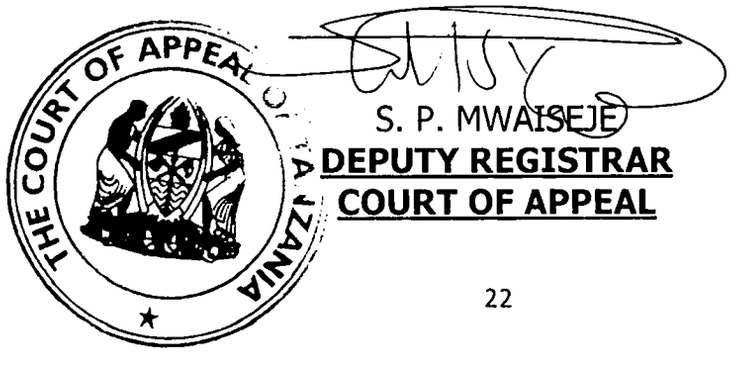
DATED at **MBEYA** this 7th day of December, 2022.

F. L. K. WAMBALI
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Judgment delivered this 8th day of December, 2022 in the presence of the appellant in person and Ms. Anastazia Elias, learned State Attorney for the respondent/Republic, is hereby certified as a true copy of the original.



S. P. MWAISEJE
DEPUTY REGISTRAR
COURT OF APPEAL