IN THE COURT OF APPEAL OF TANZANIA

AT IRINGA

(CORAM: WAMBALI, J.A., SEHEL, J.A. And MAIGE, J.A.)

CRIMINAL APPEAL NO. 257 OF 2021

STEPHANO s/o VICTOR @ MLELWA..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

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

(Matogolo, J.)

dated the 25th day of November, 2020

in

RM. Criminal Appeal No. 35 of 2020

.....

JUDGMENT OF THE COURT

24th & 29th March, 2023

SEHEL, J.A.:

In the Court of Resident Magistrate of Njombe at Njombe (the trial court), the appellant together with three others, namely; Kenty s/o Lukosi @ Sambilole, Abdul s/o Amran @ Kaduma and Ayubu s/o Shabani @ Kasikio, the second, third and fourth accused persons respectively but not parties to the present appeal, were jointly charged with armed robbery contrary to section 287A of the Penal Code, Cap. 16 R.E. 2002 (now R.E. 2022) (henceforth the Penal Code). Further, the appellant was separately charged with causing grievous harm contrary to section 225 of

the Penal Code. At the end of the full trial, the trial court acquitted the third and fourth accused persons, whereas the appellant and the second accused person were both found guilty on the first count. They were each convicted and sentenced to thirty years imprisonment. The appellant was also found guilty on the second count. He was thus sentenced to seven years imprisonment. The custodial sentences imposed upon the appellant were ordered to run concurrently. Aggrieved, the appellant and the second accused person appealed to the High Court of Tanzania at Iringa (the first appellate court). The first appellate court allowed the second accused's appeal but dismissed the appellant's appeal. Hence, this second appeal by the appellant.

Briefly, the prosecution case was as follows: on 5th May, 2018 at about 19:00, Eva d/o Jackson Mdemu (PW1), a business woman dealing with stationary business and mobile phone money transfer services, was heading home after a long work. She had a lift from the second accused person who was a motorcycle taxi driver, commonly known as "bodaboda". The second accused person dropped her about 100 metres away from her home. While she was proceeding to her house, she heard some gun shots. Then and there, she was attacked by a man not familiar to her. That man ordered her to lay down which she did and went away with her handbag. In the bag, there was cash money TZS.

845,000.00; office keys; bank deposit slip and five mobile phones make one Nokia black in colour, two Halotels, one Techno and one Itel. The mobile phones were for M-Pesa, Tigo pesa, Airtel money and Halopesa money services. After her attacker went away, she tried to rise up but she could not as she was seriously injured on her right-hand shoulder and lots of blood oozed therefrom. She cried for help and her husband; one Stanley s/o Edward Kilowoko (PW4) came to her rescue. PW4 took her to Makambako hospital where she was attended by Dr. Nickson Zombe (PW9) and five (5) roundish copper colour pellets were removed from her right-hand shoulder. Since PW1 was seriously injured, she was referred to Ikelu hospital for further treatment. At Ikelu hospital, Amosi Sanga (PW10) attended her. Upon examination, PW10 found that there were twenty-one (21) iron pellets inside PW1's right-hand shoulder. He injected her with a tetanus injection. Thereafter, PW10 operated PW1 and seventeen (17) roundish copper colour pellets were removed. The remaining four (4) pellets could not be removed because they were in the sensitive parts of the body, in the blood arteries.

At about 19:30 hrs. on the same day, information of the crime reached at Makambako police station. Superintendent of Police (SP) Yesaya (PW6), working at Makambako police station, went at the scene of the crime. At the scene, he collected one red + copper colour empty

cartridge, 12 ball calibre. PW6 also visited Makambako hospital where PW9 informed him that the victim of the crime was transferred to Ikelu hospital and handed to him the five pellets removed from PW1's right-hand shoulder. With that information, PW6 went to Ikelu hospital where he met with PW10 and was also handed 17 pellets removed from PW1.

Thereafter, the hunt of the perpetrators was mounted and with the aid of the informers, the appellant was arrested. Upon search conducted in the presence of the appellant's wife Faraja Tweve, the street Chairperson, Silas Makweta (PW7) and the lessor, Tabia d/o Shomari (PW3), PW6 seized, from the appellant's room, a short gun with serial No. YA 12001 whose barrel and handle were cut and two bullets of red + copper colour, 12 ball calibre. The short gun was hidden in the sulphate and wrapped in a black coat. The seized short gun and two bullets together with one spent cartridge retrieved from the scene and twenty-two pellets removed from PW1 were sent to ballistics expert, Assistant Superintendent of Police (ASP), Mayunga (PW11) for examination. According to PW11's report, the empty cartridge found at the scene of crime matched with the pellets removed from PW1. PW11 also confirmed that the said empty cartridge was fired from the gun found at the appellant's residence and the gun was working properly.

Upon interrogation by the police officer with number H. 4735, Detective Constable (D/C) Amos (PW2), the appellant, in his cautioned statement, named the second, third and fourth accused persons. The appellant further took the police officers to the home of the second and fourth accused persons. Upon search, nothing was found in the house of the fourth accused person whereas in the house of the second accused person, the police seized a motorcycle with registration no. MC 732 BMQ and six mobile phone sim cards; to wit, two Vodacom sim cards, one tigo sim card, one airtel sim card and one halotel sim card. The search was conducted in the presence of the second accused person, the ten-cell leader, one Jacob Solomoni and the street chairman, one Aloyce Nyauiingo (PW8). When inserted in a mobile phone, the four sim cards read that they belonged to PW1 while one Vodacom line belonged to Anna d/o Jackson Mdemi, the younger sister of PW1 and another line belonged to Haule Haule. Upon interrogation, the second accused person confessed before a police officer with number 10303 D/C Potwal (PW12), that he hired the appellant, the third and fourth accused persons to rob PW1.

The prosecution case was also built upon physical and documentary exhibits. These are; the cautioned statement of the appellant (exhibit P1); five roundish of red+ copper colour pellets (exhibit P2); one spent

cartridge of red + copper colour (exhibit P3); seventeen roundish of red + copper colour pellets (exhibit P4); a short gun with serial number YA 12001 whose barrel and handle were cut (exhibit P5); search warrant at the appellant's residence (exhibit P6); two bullets of red + copper colour, 12 ball caliber (exhibit P7); six mobile phone sim cards (exhibit P8); search warrant at the residence of the second accused person (exhibit P9); a motorcycle with registration number MC 732 BMQ (exhibit P10); Letters sent and the replies received from airtel and tigo (exhibit P11 collectively); Letter dated 5th August, 2018 sending exhibits P2, P3, P4 and P5 to PW11 for ballistic laboratory test (exhibit P12); PF3 filled at Makambako hospital (exhibit P13); PF3 filled at Ikelu hospital (exhibit P14); three spent cartridges (exhibit P15); a ballistic laboratory examination report (exhibit P16) and the cautioned statement of the second accused person (exhibit P17).

In their defence, each of the accused persons including the appellant denied to have committed the offence. The appellant claimed that he was arrested at his workplace where he was making bricks. He also denied to have a wife in the name of Faraja Tweve and denied to have rented a house from PW3.

At the conclusion of the trial, the trial court was satisfied with the evidence of PW6, PW3 and PW7 that the short gun and two bullets were retrieved from the appellant. It was also satisfied with the evidence of PW11 and exhibit P16 that the spent cartridges were shot from the gun found with the appellant. Acting on that evidence and on the cautioned statements, the trial court found the appellant and the second accused person guilt, and thus, it convicted and sentenced them as aforesaid.

On appeal, the first appellate court expunged the cautioned statements of the appellant and the second accused person on account that they were recorded beyond the time prescribed under sections 50 and 51 of the Criminal Procedure Act, Cap. 20 R.E. 2022 (henceforth the CPA). It concurred with the trial court that there is ample evidence from the prosecution coming from PW3, PW6, PW7, PW11, exhibit P5 and P16 linking the appellant with the crime. In that regard, it upheld the conviction and sentence meted to the appellant and dismissed the appellant's appeal but allowed the appeal by the second accused person. Still aggrieved, the appellant preferred this second appeal as stated above.

On 18th August, 2021, the appellant filed a memorandum of appeal comprising of seven grounds and on 22nd March, 2023, he filed a

supplementary memorandum of appeal raising four grounds of appeal. We shall deal with the grounds of appeal in a manner adopted and submitted by the learned State Attorney.

This being a second appeal to this Court, we shall be mindful of the settled principle of law that, the Court can only interfere with concurrent findings of fact by the two courts below where there are mis-directions or non-directions on the evidence, a miscarriage of justice or a violation of some principle of law or practice – see: **The Director of Public Prosecutions v. Jaffari Mfaume Kawawa** [1981] T.L.R. 149; **Musa Mwaikunda v. The Republic** [2006] T.L.R. 387 and **Dickson Elia NsambaShapwata & Another v. Republic**, Criminal Appeal No. 92 of 2007 (unreported).

At the hearing of the appeal, the appellant appeared in person, unrepresented whereas Mr. Juma Mahona, learned State Attorney appeared for the respondent Republic.

When given a chance to submit on his grounds of appeal, the appellant preferred the respondent Republic to reply first to his grounds of appeal while reserving his right of rejoinder later should it be necessary to do so.

Mr. Mahona began his reply submission by informing the Court

that the respondent is not supporting the appeal. He then went on to submit on the first ground of appeal in the supplementary memorandum of appeal. In that ground, the appellant complained that the charge of armed robbery was fatally defective for failure to mention essential elements of the offence of armed robbery. The learned State Attorney argued that the charge levelled to the appellant, appearing at page 1 of the record of appeal, disclosed all essential ingredients of the offence of armed robbery. He pointed out that the particulars of offence disclosed the person who was threatened, the weapon used, the items stolen and the owner of the stolen items. It was the submission of Mr. Mahona that the complaint is unfounded, he thus urged the Court to dismiss it.

The appellant did not have anything to rejoin.

In determining this ground, we find it appropriate to reproduce the charge of armed robbery which is under controversy. The said charge reads as follows:

"STATEMENT OF OFFENCE

ARMED ROBBERY; *Contrary to section 287A of the Penal Code, Cap. 16 R.E. 2002 as amended by section 10 of the Written Laws (Miscellaneous Amendment Act) No. 3 of 2011.*

PARTICULARS OF OFFENCE

STEPHANO s/o VICTORY @ MLELWA, KENTY s/o LUKOSI @ SAMBILOLE, ABDUL s/o AMRAN @ KADUMA *and* ***AYUBU s/o SHABANI @ KASIKIO*** *on 5th day of May, 2018 at Bwawani street within the District and Region of Njombe, stole 5 mobile phones one Nokia black in colour, 2 Halotel, 1 Techno and 1 Itei, cash TZS. 845,000.00, the property of one* ***EVA d/o JACKSON @ MDEM*** *and immediately before the time of such stealing were armed with dangerous weapon to wit; a gun make short gun and at or immediately before the time of stealing use the said gun against the said* ***EVA d/o JACKSON @ MDEM*** *to threaten her in order to obtain the said goods."*

Section 287A of the Penal Code which the appellant was charged with provides:

"Any person who ***steals anything and at or immediately after the time of stealing is armed with any dangerous or offensive weapon or robbery instrument;*** *or is in company of one or more persons, and* ***at or immediately before or immediately after the time of the stealing uses or threatens to use violence to any*** *person, commits an offence termed armed robbery" and on conviction is liable to imprisonment for a*

minimum term of thirty years with or without corporal punishment." [Emphasis supplied]

The above provision of the law dictates in clear term that, for the offence of armed robbery to be established; there must be stealing; any dangerous or offensive weapon or instrument ought to be involved at or immediately before or after such stealing and the person against whom the threat was directed must also be mentioned.

Before the first appellate court, the appellant raised the same ground. He contended that the charge did not clearly show whether *"the dangerous weapon was used before, during and immediately after stealing the alleged goods".* The first appellant court did not find merit to the complaint. We equally do not find merit to this ground. As righty submitted by the learned State Attorney, the particulars of the offence sufficiently disclosed all the essential ingredients of the offence of armed robbery. The charge mentioned that there was a stealing of five mobile phones one Nokia black in colour, two Haloteis, one Techno, one Itel and cash money of TZS. 845,000.00. The reproduced charge also details that the weapon used was a short gun which is a dangerous weapon and the person against whom the violence was directed was also mentioned. In that regard, the appellant's complaint that the charge did not mention the words "*before, during and immediately after*" is without

merit as the reproduced charge provides in clear terms that "*a gun make short gun and at or immediately before the time of stealing*" was directed to **Eva d/o Jackson Mdem.** At the end, we dismiss this ground of appeal for lacking merit.

Responding on the third ground of the memorandum of appeal that the successor trial magistrate did not comply with the law when taking over the partly heard case, Mr. Mahona conceded to the anomaly that, it is true Mhanusi, Resident Magistrate (RM) commenced the trial by recording the evidence of five prosecution witnesses but did not complete. It was completed by Makube, Senior Resident Magistrate (SRM). He pointed out that after taking over, the accused person was not informed on the reasons for taking over the partly heard trial. He added that at page 81 of the record of appeal, the reason for taking over is indicated but it was made in absence of the parties thus the appellant was not informed on the reason.

Nevertheless, he contended that such omission did not prejudice the appellant because he was able to follow the proceedings. He said, the appellant was able to follow the evidence of prosecution witnesses, such that he put questions to the said witnesses for the purpose of cross examination and at the end, he was able to mount his defence under

oath. The learned State Attorney further argued that throughout the trial, the appellant did not complain and even before this Court he has not explained how he was prejudiced by such failure. At the end, Mr. Mahona contended that the omission is curable under section 388 (1) of the CPA. He fortified his submission by citing the case of **Tumaini Jonas v. The Republic**, Criminal Appeal No. 337 of 2020 [2021] TZCA 401; [24 August, 2021, TANZLII].

On this complaint, the appellant did not make any rejoinder.

On our part, we revisited the record of appeal and we noted that the trial of the appellant, second, third and fourth accused persons was conducted by two different magistrates. The trial commenced with Mhanusi, RM who heard the prosecution evidence of PW1, PW2, PW3, PW4 and PW5. The case was then transferred to Makube, SRM who proceeded to hear the evidence of the remaining prosecution witnesses, namely; PW6, PW7, PW8, PW9, PW10, PW11 and PW12. He also heard the defence case of DW1, DW2, DW3 and DW4. At the end of the trial, Makube SRM composed the judgment wherein he convicted the appellant and the second accused person but discharged the third and fourth accused persons.

We further noted that at page 81 of the record of appeal, the court recorded the reason for taking over a partly heard trial that there was a transfer of trial magistrate to another station. It is unfortunate that this reason for taking over a partly heard trial was made in absence of the parties. Of course, the law permits taking over of the partly heard trial or committal proceedings. The relevant provision of the law for the matter at hand is section 214 (1) of the CPA that provides:

> *"(1) Where any magistrate, after having heard and recorded the whole or any part of the evidence in any trial or conducted in whole or part any committal proceedings* ***is for any reason unable to complete the trial*** *or the committal proceedings* ***within a reasonable time****, another magistrate who has and who exercises jurisdiction* ***may take over and continue the trial*** *or committal proceedings, as the case may be, and the magistrate so taking over* ***may act on the evidence or proceeding recorded by his predecessor and may, in the case of a trial and if he considers it necessary, resummon the witnesses and recommence the trial*** *or the committal proceedings."* [Emphasis added].

Although the above provision of the law uses the word 'may' suggesting that the decision of resummoning of witnesses is that of the magistrate taking over the proceedings from another magistrate, if he or she considers it necessary and that an accused person has no say on the matter, the Court has in a number of occasions echoed the need of stating the reason for taking over of the partly heard case. For instance, in the case of **Isaack Stephano Kilima v. The Republic**, Criminal Appeal No. 273 of 2011 (unreported) the Court stressed that:

> *"We are of the considered view that it is very important that the magistrate taking over should state the reason for doing so. One magistrate cannot simply continue with a trial by another magistrate without stating the reasons for the change. This is a requirement under the law and therefore has to be complied with. It is also important for the sake of transparency so as not to prejudice the accused in any way. The accused person has a right to know why there is a new presiding magistrate when the case has been heard and the whole prosecution evidence recorded, by another magistrate."*

Notwithstanding that requirement, each case must be determined according to its own peculiar facts and circumstances. For instance, in the case of **Charles Yona v. The Republic**, Criminal

Appeal No. 79 of 2019 [2021] TZCA 339; [02 August, 2021, TANZLII], where the Court was faced with almost similar situation, stressed that, for the conviction to be quashed on account of non-compliance of section 214 (1) of the CPA, two conditions must be satisfied; **one**, the appellant's conviction was vitiated by the non-compliance with section 214 (1) of the CPA and **two**, the appellant must have been materially prejudiced by the conviction by reason of the evidence not wholly recorded by the successor magistrate, for instance, where the successor magistrate wrongfully assumed jurisdiction or there was unauthorized takeover of the file on the part of the successor magistrate.

We have stated herein that Makube, SRM took over the partly heard proceedings from Mhanusi, RM who was transferred to another station. Much as the reason for transfer was not explained to the appellant, given the peculiar circumstance of the present appeal, we are of the settled mind that the omission did not prejudice the appellant since throughout the trial, he did not complain and neither did he state in the ground of appeal as to how he was prejudiced – see: the case of **Tumaini Jonas v. The Republic** (supra). More so, there is nothing to suggest that the successor magistrate assumed jurisdiction without a reason. Accordingly, we find that this ground of appeal lacks merit.

Replying to the third ground in the supplementary memorandum of appeal, that the appellant's defence was not considered, Mr. Mahona readily conceded that it is true that the trial court did not at all consider the appellant's defence and even the first appellate court did not perform its obligation of appraising the entire evidence and come up to its own conclusion. He therefore invited the Court to step into the shoes of the first appellate court and consider the appellant's defence. He fortified his submission by citing the case of **Allen Francis v. The Republic**, Criminal Appeal No. 327 of 2019 [2022] TZCA 689; [26 October, 2022, TANZLII].

The learned State Attorney went on to submit that, essentially, the defence of the appellant was a general denial. He denied to have been arrested at his home as he claimed he was arrested at his workplace. He denied that Faraja Tweve was his wife and that, PW3 was his landlady. It was the submission of Mr. Mahona that such a general denied did not shake the prosecution case as there were independent witnesses, namely; PW3 and PW7 who witnessed his arrest while he was at his homeplace. Accordingly, Mr. Mahona urged the Court to dismiss the ground for lacking merit.

The appellant re-joined that he was arrested at his work place and that, the police fabricated a case against him together with three other cases. He contended that he won, on appeal, one of the fabricated cases of unlawful possession of firearm. He produced to us the decision of **Stephano Mlelwa s/o Stivin v. The Republic**, Economic Appeal No. 26 of 2021 [2021] TZHC 12564; [11 November, 2021, TANZLII].

Having considered the submissions of the parties and examined the record of appeal, we entirely agree that the trial court did not consider the appellant's defence evidence. Likewise, the first appellate court that has a duty to subject the entire evidence on record to a fresh re-evaluation and come to its own findings of fact, did not do so. This is a clear case of a violation of a settled principle of law.

Then again, the omission to consider the defence evidence does not vitiate the proceedings of both lower courts because the Court has powers to step into the shoes of the first appellate court and perform the duty of re-evaluating the defence evidence so as to arrive at its own finding -see: **Allen Francis v. The Republic** (supra) and **Joseph Leonard Manyota v. The Republic**, Criminal Appeal No. 485 of 2015 (unreported). In that respect, we are, as the second court of appeal, entitled to look at the relevant defence evidence, weigh the same

against that of the prosecution and make our own findings of fact. We shall shortly re-assess the evidence when dealing with the ground that challenges proof of the case beyond reasonable doubt.

In the second ground in the supplementary memorandum of appeal, the appellant complained that the chain of custody of the seized gun and two bullets was not established. In responding to this ground of appeal, Mr. Mahona trailed through the seizure of the gun and the two bullets. He argued that the exhibits were seized by PW6 from the appellant's room in the presence of PW3 and PW7. After the seizure, PW6 took the exhibits to Makambako police station and handed over to a store keeper. The learned State Attorney admitted that the said exhibit keeper did not testify in court and the evidence on record is silent as who stored the exhibits at the police station. Despite such anomaly, he argued that the exhibits seized were the ones taken to the ballistic expert for examination and later on tendered before the trial court by PW6. Relying on the case of **Jibril Okash Ahmed v. The Republic,** Criminal Appeal No. 331 of 2017 [2021] TZCA 13; [11 February, 2021, TANZLII], he argued, given the nature of the seized exhibits, there were no chances of tempering with the exhibits. He thus concluded that the gun and the bullets seized at the appellant's home, later examined by

PW11 and finally tendered in the trial court by PW6 were one and the same. He thus urged the Court to dismiss the complaint.

The appellant did not have any rejoinder to the learned State Attorney's submission.

For the chain of custody, it has been repeatedly stressed that the prosecution must exhibit the chronological account through documentation and/or paper trail or through oral account on the seizure, custody, control, transfer, analysis, and disposition of evidence, be it physical or electronic – see: **Paulo Maduka & 3 Others v. The Republic**, Criminal Appeal No. 110 of 2007; **Abuhi Omari Abdallah & 3 Others v. The Republic**, Criminal Appeal No. 28 of 2010 (both unreported) and **Moses Mwakasindile v. The Republic**, Criminal Appeal No. 15 of 2017 [2019] TZCA 275; [30 August, 2019, TANZLII].

However, there is an exception to that general requirement as in certain circumstances where the exhibit cannot change hand easily, the said exhibit can be admitted in evidence and acted upon by the trial court. We stated this position in the case of **Joseph Leonard Manyota v. The Republic** (supra), where the appellant challenged the handling of motorcycle that it was not clear as to how it landed into the hands of

PW1 who tendered it in court after it was taken to the police upon its seizure. In deliberating that complaint, the Court said:

> *"... it is not every time that when the chain of custody is broken; then the relevant item cannot be produced and accepted by the court as evidence, regardless of its nature. We are certain that this cannot be the case say, where the potential evidence* ***is not in the danger of being destroyed or polluted and/or in any way tempered with.*** *Where the circumstances may reasonably show the absence of such dangers, the court can safely receive such evidence despite the fact that the chain of custody may have been broken. Of course, this will depend on the prevailing circumstances in every particular case."* [Emphasis added]

In this appeal, even though there was no account how the short gun and the two bullets were stored or who kept them at Makambako police station after being seized from the appellant, given the peculiar type of the exhibits involved that they cannot easily change hands, we are satisfied that both the trial court and the first appellate court correctly received the exhibits and acted upon them. We say so because we are settled in our mind that on the circumstance of the present appeal, the exhibits were not tempered. This is because, in view of the

facts as to their identities in the memorandum of facts and the evidence of PW1, the short gun and two bullets seized from the appellant were the ones examined by PW11 and later on tendered in court by PW6.

It is on record that, at the time of seizure, PW6 gave the description of the seized items, that, the gun was a short gun whose barrel and handle were cut with serial number YA 12001 and it was retrieved from a sulphate sack, wrapped in a black coat. Further, PW6 described the two seized bullets in terms of their colour and type that they were of red + copper colour, 12 ball calibre. The ballistic expert, PW11 and the ballistic examination report, Exhibit P16 illustrated the same details.

There is also evidence of the photographs taken by PW11 which form part of exhibit P16. Looking at the photographs, we find same details given by PW6 that the short gun was inside the sulphate bag and wrapped with a black coat. The barrel and handle of the said short gun were cut.

It should be noted that, PW3 and PW7 who were present during search, both gave same description of the seized short gun and the two bullets. That the short gun was hidden in the sulphate bag and wrapped in a black coat.

There is also another evidence coming from PW11 that connects the seized exhibits with the ones examined by him. PW11 told the trial court the exhibits were sent to his office on 6th August, 2018 by PW6 and the description of the exhibits sent to him matches with the ones seized by PW6.

For the above reasons, we are, as the two lower courts did, satisfied that the short gun and the two bullets seized at the appellant's home, examined by PW11 and later tendered in the trial court by PW6 were one and the same. We therefore find that this ground is without substance.

Lastly, the learned State Attorney argued conjunctively, the first, second, fourth, fifth, sixth and seventh grounds in the memorandum with the fourth ground in the supplementary memorandum of appeal. These grounds raise the issue as to whether the prosecution was able to discharge its duty of proving the case beyond reasonable doubt against the appellant. Mr. Mahona submitted and we entirely agree with him that the case for the prosecution was purely on circumstantial evidence. It is the position of the law that a court may ground a conviction based solely on circumstantial evidence where the said evidence irresistibly leads to the inference that it was the appellant and nobody else who

committed the offence, and that; such evidence must be incapable of more than one interpretation and the chain linking such evidence must be so complete as not to leave reasonable ground for conclusion consistent with the innocence of the accused - see: our decision in the case of the **Augustino Lodaru v. The Republic**, Criminal Appeal No. 90 of 2013 [2014] TZCA 258; [17 March, 2014, TANZLII].

In the present appeal, the circumstantial evidence linking the appellant with the offence is the short gun and two bullets retrieved from his homeplace. We understand that the appellant in his defence denied to have been arrested at his residence. He claimed that he was arrested at his workplace where he was making bricks. He also denied that Faraja Tweve was his wife. He also said he does not know PW3.

On our own appraisal of evidence, we find that his general denial did not shake the prosecution case because apart from the police officers who went to arrest him and apart from PW3 whom he said he does not know her, there was another independent witness, one Silas Makweta, PW7, the street chairperson who was present at the time of search, seizure and his arrest. When the evidence of PW6, PW3, PW7 weighed against the appellant's general denial, we find that the appellant was perfectly placed at his home and not at his workplace. On

the face of such evidence coupled with the evidence of PW11 and exhibit P16, as discussed in other grounds of appeal, we are not persuaded that the police officers fabricated the case against him. We are satisfied that the prosecution proved its case beyond reasonable doubt against the appellant. Thus, there is nothing to fault the concurrent findings of the two lower courts. Accordingly, we proceed to dismiss the grounds of appeal.

In the event, we find that the appeal to be devoid of merit and we hereby dismiss it.

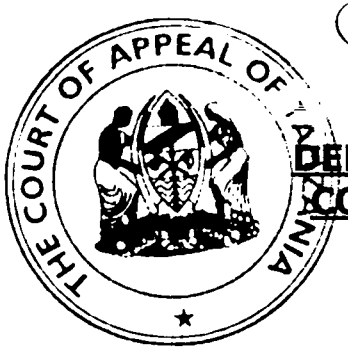
DATED at **IRINGA** this 29th day of March, 2023.

F. L. K. WAMBALI
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

The judgment delivered this 29th day of March, 2023 in the presence of the appellant in person and Ms. Magreth Mahundi learned State Attorney for the respondent Republic, is hereby certified as a true copy of the original.



G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL