IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

(CORAM: MWAMBEGELE, J.A., KEREFU, J.A. And KIHWELO, J.A.)

CRIMINAL APPEAL NO. 53 OF 2020

MATHAYO LAURENCE WILLIAM MOLLEL ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the Judgment of the Resident Magistrates' Court of Arusha, at Arusha)

(Bwegoge, RM – Ext. Juris.)

dated the 17th day of October, 2019
in
Ext. Juris. Criminal Appeal No. 47 of 2019

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JUDGMENT OF THE COURT

30th November, 2022 & 20th February, 2023

MWAMBEGELE, J.A.:

The appellant was convicted by the Court of the Resident Magistrate of Arusha sitting at Arusha in five counts of the offence of raping four girls of tender age. He was also convicted in one count of having carnal knowledge of one of them against the order of nature. He was sentenced to life in prison in each count. The sentences were ordered to run concurrently. His first appeal before Bwegoge, RM (Ext. Juris.) was barren of fruit. Undeterred, he has come to this Court on a second appeal.

The background to the appellant's arraignment is not difficult to comprehend. It all started on 08.03.2017 when Salma John (PW1), Obed Malamu Mollel (PW2), the Village Executive Officer of Simanjiro Hamlet, Chairperson and other village leaders visited Maasai Children Education Centre with a view to inspecting if it complied with health conditions. It was in that process when they interrogated the girls, the victims in the present appeal and told that they were being raped at night by the appellant. Further interrogations unveiled that one Emmanuel Elius Tluway, the fourth accused at the trial, who was a watchman there used to open the gate for the appellant the latter used to go to the victims and ravish them in turns. The appellant was arrested and charged with the charges the subject of this appeal. There were other accused persons charged in other counts not the subject of this appeal. They were acquitted by the trial court. As indicated above, Emmanuel Elius Tluway was also charged, *inter alia*, with raping the girls but was also acquitted by the trial court on those counts. He was, however, convicted of the offence of failure to prevent the commission of an offence contrary to sections 383 and 35 of the Penal Code, Cap. 16 of the Revised Edition, 2002 and sentenced to a two-year prison term on each

count. His first appeal proved futile and, from the record before us, he has not appealed to this Court.

At the trial, the prosecution fielded a total of 19 witnesses. However, just some of them were meant to prove the case against the appellant. These were: PW1, PW2, the victims (PW3 – PW11), Dr. Felix Mtei (PW16), Insp. Jane (PW18) and No. E 2548 DC Michael (PW19). At the end of the trial, the appellant was convicted on the counts named above and the first appellate court upheld the convictions and sentences as already stated above, hence the present appeal.

The appellant filed a total of sixteen grounds of appeal comprised in two memoranda of appeal; the first one which consists of nine grounds was lodged on 04.04.2022 while the other one, the supplementary memorandum of appeal, comprises seven grounds of appeal and was lodged on 23.11.2022. Alongside the supplementary memorandum of appeal, the appellant had also filed written submissions in support of the appeal which, at the hearing, he wished to adopt them wholly as his oral arguments.

The appeal was resisted by a team of three trained minds; Ms. Lilian Mmassy, learned Senior State Attorney, Ms. Upendo Shemkole, State Attorney and Mr. Charles Kagirwa, also State Attorney.

In the written submissions, the appellant challenged the decisions of the two lower courts on the general ground that the case was not proved beyond reasonable doubt. This argument was pegged on arguments that; **one**, the evidence of the victims was received contrary to section 127 (2) of the Evidence Act, Cap. 6 of the Revised Edition, 2002 (the Evidence Act); **two**, the cautioned statement of the appellant was received contrary to the law; **three**, the PF3s were not read out in court after reception in evidence; **four**, the appellant was not identified by the victims; **five**, the appellant's defence was not considered; and **six**, other irregularities; age of the appellant being eighteen, age of the victims not being proved beyond reasonable doubt and the sentence being illegal.

Having adopted the written submissions as his oral arguments at the hearing of the appeal, the appellant was ready to hear the response of the Republic. We shall revert to the details of the appellant's arguments in the course of determination of the issues of contention.

It was Mr. Kagirwa who made the response, expressing his stance at the outset that the appellant's convictions and sentences were appropriate.

Arguing the complaints against the testimonies of the victims; that they were against the dictates of section 127 (2) of the Evidence Act, Mr. Kagirwa submitted that the section was amended by the Written Laws (Miscellaneous Amendments) Act, 2016 which did away with the *voire dire* test and just required the child of tender age, before giving evidence, to promise to tell the truth in his testimony. That is what PW3, PW4, PW5, PW6, PW7, PW8, PW9 and PW11 did before testifying; they promised to speak the truth. To reinforce his argument, the learned State Attorney cited to us our unreported decision in **Jonas Lesi Doo v. Republic**, Criminal Appeal No. 561 of 2020. The complaint was thus without merit and should be dismissed, he argued.

The complaint that the charge was defective was the subject of ground two of the memorandum of appeal and ground one in the supplementary memorandum. He submitted that what the witnesses testified was the scene of crime was the one stated in the charge. These grounds were also without merit, he argued.

The complaint in ground three was that the provisions of section 312 (1) of the Criminal Procedure Act (the CPA) were not complied with because the judgment was not signed. Mr. Kagirwa argued that the complaint was not backed by the record, for the judgment, which appears at p. 198 of the record of appeal, was signed. He thus urged us to dismiss this ground of appeal.

Grounds four, eight and nine in the memorandum of appeal and two in the supplementary memorandum of appeal are on the cautioned statement of the appellant. The learned state attorney submitted that this complaint was not justified because the two courts below did not found the convictions of the appellant on the cautioned statement. He thus invited us to dismiss these grounds of appeal as well.

Ground five seeks to fault the trial court and the first appellate court for convicting the appellant on the basis of the testimony of the victims who did not disclose the ingredients of the offence of rape. That, they simply said the appellant did a bad habit to them. Mr. Kagirwa admitted that the victim witnesses did not graphically testify on what the appellant did to them. They simply testified that the appellant did bad habit to them (or *alitufanyia*

tabia mbaya in Kiswahili), referred to the appellant's penis as his "dudu" or that his urinal part was inserted in their urinal parts, etc. Those explanations, Mr. Kagirwa submitted, were permissible in law. He referred us to our unreported decisions in **Joseph Leko v. Republic**, Criminal Appeal No. 124 of 2013 relied upon by the first appellate court as appearing at p. 311 of the record of appeal. He also referred us to our other unreported decision in **Hassan Kamunyu v. Republic**, Criminal Appeal No. 277 of 2016 on the same subject. He thus urged us to dismiss this ground of appeal as well.

Failure to consider the appellant's defence was the appellant's complaint conceded by the learned State Attorney. However, he was quick to submit that it was incumbent upon the first appellate court to rectify the anomaly. As that was not done, the learned State Attorney invited the Court to step into the shoes of the first appellate court to do what it did not do. He relied on our unreported decision in **Shabani Haruna @ Dr. Mwagilo v. Republic**, Criminal Appeal No. 396B of 2017 to support his argument.

The complaint in ground three of the supplementary memorandum of appeal was on the identification of the appellant. Mr. Kagirwa submitted that the victims identified the appellant at different times. After all, he

argued, this complaint was not raised at the trial and on first appeal. It thus should be disregarded, he argued.

The complaint on the age of the appellant, the subject of the fourth ground of the supplementary memorandum of appeal, as being eighteen was argued by Mr. Kagirwa to be an afterthought. He submitted that the age of the appellant was indicated in particulars of the charge to be twenty years. The appellant never raised the complaint at the trial and on the first appeal and thus, he argued, his complaint was an afterthought which should be disregarded.

On the age of the victims, the subject of the fifth ground of the supplementary memorandum of appeal, Mr. Kagirwa submitted that the same was proved by PW16, the Medical Doctor who filled the PF3s of the victims. After all, he argued, the victims stated their respective ages before testifying and the appellant did not cross examine on them. Failure to cross examine estops the appellant from complaining, he argued. The learned State Attorney referred us to our unreported decision in **Wilson Elisa @ Kiungai v. Republic**, Criminal Appeal No. 449 of 2018 in which we held that evidence of age may be deduced from the circumstances availed to the

court in terms of section 122 of the Evidence Act and as we held in our unreported decision in **Issaya Renatus v. Republic**, Criminal Appeal No. 542 of 2015. The learned State Attorney thus implored us to dismiss the ground of appeal.

On ground six of the supplementary memorandum of appeal, the complaint that the PF3s (Exh. PE1) were not read out in court after admission, Mr. Kagirwa submitted that the complaint was not backed by the record of appeal. He submitted that the same were read out in court after admission as appearing at p. 95 of the record of appeal.

In response to the general ground that the case was not proved beyond reasonable doubt, the subject of ground seven in the memorandum of appeal and also ground seven in the supplementary memorandum of appeal, Mr. Kagirwa submitted that in view of the evidence of the victims supported by the evidence of PW16, the case against the appellant was proved to the hilt. He thus implored us to dismiss the appeal in its entirety.

The appellant had nothing in rejoinder, save for reiterating that he should be released from prison custody by allowing his appeal.

In dealing with the points of contention, we propose to address the grounds of appeal in sequence and combine them with the ones with similar complaint in the supplementary memorandum of appeal as done by the learned State Attorney.

The first complaint by the appellant is that the provisions of section 127 (2) of the Evidence Act were flouted. He submitted that under the provisions of section 127 (2) of the Evidence Act, before a child of tender years is allowed to give evidence in court, the trial court must first examine the child to test his competence if he knows and understands the meaning and nature of oath and after he promises to the court **to tell the truth and not to tell lies**. He argued that in the present appeal, the trial court did not record if it conducted a brief test to verify the victim's competency to testify and know if they understood the meaning and nature of oath. He added that, even if the court did so, the promise was incomplete as the child witnesses promised only to tell the truth, they did not promise not to tell lies thereby contravening the provisions of section 127 (2) of the Evidence Act. He thus urged us to expunge the evidence of child witnesses for noncompliance with section 127 (2) of the Evidence Act. Mr. Kagirwa, as

shown above, was of a contrary view. To him, the provisions of section 127 (2) of the Evidence Act were complied with to the letter.

The procedure for taking the evidence of a child of tender age is provided for by the provisions of section 127 (2) of the Evidence Act. For easy reference, we reproduce the section hereunder:

> *"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 lies."*

As we held in **Issa Salum Nambaluka v. Republic,** Criminal Appeal No. 195 of 2018 (unreported), the plain meaning of the provisions of sub-section (2) of section 127 of the Evidence Act reproduced above, a child of tender age may give evidence on oath or affirmation or without oath or affirmation. Where a child of tender age is to give evidence without oath or affirmation, he must make a promise to tell the truth and undertake not to tell lies.

In the case at hand, the child witnesses who are the victims on the counts on which the appellant was convicted, did not give evidence on oath or affirmation. They simply promised to tell only the truth. We think this

was quite appropriate in terms of sub-section (2) of section 127 of the Evidence Act reproduced above. We are unable to agree with the appellant that the trial court ought to have conducted a test to verify whether the child witnesses knew and understood the meaning of oath or affirmation. In our considered view, that requirement would only be necessary if the child witnesses testified on oath or affirmation. We respectfully think that if a child of tender age is not to testify on oath or affirmation, a preliminary test on whether he knew and understands the meaning of oath may be dispensed with.

The appellant also argued that the child witnesses' promise was incomplete for promising only to tell the truth and omitted to undertake not to tell lies. We find difficulties in agreeing with him. We understand the legislature used the words "promise to tell the truth to the court and not to tell lies". We think tautology is evident in the phrase, for, in our view, 'to tell the truth" simply means "not to tell lies". So a person who promises to tell the truth is in effect promising not to tell lies. The tautology in the subsection is, in our opinion, a drafting inadvertency. We thus find no substance in the first ground of appeal and dismiss it.

The complaint in the second ground of appeal and ground one on the supplementary ground of appeal is on the charge; that it was defective. Unfortunately, the appellant did not front any argument in his submissions. We fail to understand the basis of this complaint. For our part, we find no defect in the charge and dismiss this complaint.

Likewise, the argument that the judgment was not signed thereby offending the provisions of section 312 (1) of the CPA, the complaint on the third ground of appeal, will not detain us. The appellant fronted no argument in his submissions and the record of appeal does not support him. As rightly put by the learned State Attorney, the record of appeal bears out at p.198 that the judgment was duly signed. The same is the position with the original record. We find this complaint without substance and dismiss it.

Grounds four, eight and nine of the memorandum of appeal and ground two of the supplementary memorandum of appeal seek to challenge the two courts below for convicting the appellant on the basis of the cautioned statement which was allegedly illegally procured from the appellant, was not in the list of exhibits to be tendered and was not read out in court after admission. The appellant referred us to the case of **Omary**

Said @ Athumani v. Republic, Criminal Appeal No. 58 of 2022 (unreported) in which we expunged a cautioned statement which was not listed in the list of exhibits. We agree that the ailments in the cautioned statement are there as complained by the appellant. However, we agree with the learned State Attorney that the cautioned statement was not used by the trial court to found the appellant's conviction. The first appellate court also did not use it to confirm the conviction. The appellant's complaint is also without basis. We dismiss it.

We now turn to consider the complaint in ground five of memorandum of appeal to the effect that the victims did not disclose the actual act by the appellant against them apart from saying he did a bad habit to them. To the appellant, the victims ought to have testified on what exactly the appellant did, instead of sugarcoating it by saying the appellant did a bad habit to them. The learned State Attorney resisted that the explanations by the victims were sufficient to show that the appellant raped them.

We do not agree with the appellant that the victims did not go beyond testifying that the appellant did a bad habit to them. The witnesses went beyond that by saying what actually the appellant did. For instance, PW3

testified at p. 63 of the record of appeal that "the said Mathayo used to penetrate his thing into my urinal part", PW5 testified at p. 66 of the same record that "Mathayo ... used to take his urinal part and penetrate to my urinal part", PW6 testified at p. 68 of the record that "the 3rd accused used to penetrate his urinal thing into my urinal part", PW8 testified that "the said Mathayo used to take his 'dudu' and put it into my urinating part and into my anus". PW9 testified at p. 75 of the record of appeal that "Mathayo used to put his dudu at my urinal part".

The above demonstrates that some of the victims went above testifying what they meant by the appellant doing bad habit to them. However, admittedly, they did not graphically describe the penetration of the appellant's penis into their respective vaginas or anus. That is sufficient to show that the appellant raped the victims. The first appellate court discussed this issue at p. 311 of the record of appeal and cited the case of **Joseph Leko** (supra) and arrived at a conclusion, correctly in our view, that the explanations by the victim was but sufficient to describe that they were penetrated. In **Hassan Kamunyu** (supra), the decision of the Court cited to us by the learned State Attorney, we discussed at some considerable length on the jurisprudence obtaining in our jurisdiction on the point. We

quoted an excerpt from **Joseph Leko** (supra) which we find worth recitation here:

> *"Recent decisions of the Court show that what the court has to look at is the circumstances of each case including* ***cultural background, upbringing, religious feelings, the audience listening, and the age of the person giving the evidence****. The reason is obvious. There are instances and they are not few, where a witness and even the court would avoid using direct words of the penis penetrating the vagina. This is because of cultural restrictions mentioned and other related matters. The cases of* ***Minani Evaristi v. R,*** *CRIMINAL APPEAL NO. 124 OF 2007 and* ***Hassani Bakari v. R*** *CRIMINAL APPEAL NO. l03 OF 2012 (both unreported) decided by this Court in February and June 2012 respectively are some of the recent development in the interpretation of section 130(4) (a) of the Penal Code."*

In **Hassan Kamunyu**, we observed that phrases like "[he] removed my underwear and started intercoursing me", "sexual intercourse" or "have sex", "[he] undressed me and started to have sex with me", "*kanifanyia tabia mbaya*", *"alinifanya matusi"* or "he put his *dudu* in my vagina" or "did sex

me by force", "this accused raped me without my consent", "While this accused was sexing me I alarmed" and "fortunately one B s/o T came to my home and he found this accused still sexing", though not explicitly described, referred to penetration of the penis of the accused person into the vagina of the victim.

In the matter before us, as already shown above, the victims, by testifying that "the said Mathayo used to penetrate his thing into my urinal part", "Mathayo ... used to take his urinal part and penetrate to my urinal part", "the 3rd accused used to penetrate his urinal thing into my urinal part", "the said Mathayo used to take his 'dudu' and put it into my urinating part and into my anus", "Mathayo used to put his dudu at my urinal part", they simply meant the appellant penetrated his penis into their respective vaginas or anus. The complaint by the appellant is therefore without merit and dismissed.

Next for consideration is the complaint in ground six of the memorandum of appeal to the effect that the appellant's defence was not considered. The learned State Attorney conceded to this complaint. We agree. The trial court started to determine the case at p. 149 of the record

of appeal. The same was done in hardly a page by considering the testimonies of victims only and that of PW16 and concluded that the prosecution proved the case against the appellant in the 11th, 12th, 13th, 14th, 15th and 16th. No reference was made to the appellant's defence. That was an error on the part of the trial court. The first appellate court slipped into the same error. As a first appellate court, it was incumbent upon it to subject the evidence adduced at the trial to that scrutiny as if it was rehearing the case. That was not done and as we held in **Mzee Ally Mwinyimkuu @ Badu Seya v. Republic**, Criminal Appeal No. 499 of 2017 (unreported), the second appellate court may step into the shoes of the first appellate court and do what it did not do. But what was the appellant's defence? The record of appeal bears out at p. 116 that the appellant just made evasive denials that he did not commit the offence. That the cautioned statement was not his and that he was just made to sign it. He repudiated it.

Given the appellant's defence at the trial which consists of evasive denials, we are afraid, even if the two courts below considered it, they would have arrived at the same conclusion. Consequently, we find no substance in this ground of appeal and dismiss it.

We now turn to consider the complaint on the identity of the appellant, the subject of ground three in the supplementary memorandum of appeal. The appellant submitted that there was no clear evidence from the prosecution on how the victims knew him. As the victims testified that the offence was being committed at night, he argued, there ought to have been conducted an identification parade to verify that he was the one who used to rape the victims. On his part, Mr. Kagirwa submitted that the appellant was identified by the victims on different occasions. After all, he argued, the ground of appeal was not raised on the first appeal and there was no such complaint at the trial. The learned State Attorney thus implored us to ignore the complaint. We think Mr. Kagirwa is right. There was no such complaint at the trial. Neither did it arise on first appeal. We agree with him that the complaint is but an afterthought. It is now settled law that, unless it is a point of law, this Court will only consider and determine grounds raised on an appeal on which it is sitting. See: **Alex Ndendya v. Republic,** Criminal Appeal No. 340 of 2017, **Rutoyo Richard v. Republic**, Criminal Appeal No. 114 of 2017, **Godfrey Wilson v. Republic,** Criminal Appeal No. 168 of 2018, **Nasibu Ramadhani v. Republic**, Criminal Appeal No. 310 of 2017 and **Charles Athumani v. Republic**, Criminal Appeal No. 6 of 2018 (all

unreported). As the ground is not one of law, and as there was no general ground on the first appeal that the case was not proved beyond reasonable doubt in which we could encapsulate this new complaint as we held in **Sabas Kuziriwa v. Republic**, Criminal Appeal No. 40 of 2019 (unreported), **Robert Andondile Komba v. Republic**, Criminal Appeal No. 465 of 2017 (unreported) and **Rutoyo Richard** (supra), we find ourselves constrained to agree with the learned State Attorney that the same should be ignored. For the stated reasons, and on these authorities, we ignore this complaint.

We now turn to determine the complaint of the appellant respecting his age, the subject of the fourth ground in the supplementary memorandum of appeal. The appellant submitted that he was eighteen when the offence was committed and thus, in terms of section 131 (2) (a) of the Penal Code, he should not have been sentenced to a custodial sentence but to corporal punishment. On the other hand, Mr. Kagirwa, argued that he was twenty years of age when the offence was committed. That was the age indicated in the charge sheet and the appellant did not raise any alarm then. Neither was there any alarm raised to that effect on first appeal. His complaint before the court, he argued, was an afterthought. After all, the learned State Attorney argued, his argument would stand only if his complaint was that he

was under eighteen. This complaint will not detain us. We agree that the law under section 131 (2) (a) of the Penal Code prohibits imposition of a custodial sentence if an accused person is "a boy who is of the age of eighteen years or less". However, we tend to agree with the learned State Attorney that the appellant's complaint must be an afterthought. We say so because his age was indicated in the charge sheet to which he pleaded. Much as we agree that what is indicated in the charge sheet relating to the age of an accused person is not evidence as per our decisions in **Andrea Francis v. Republic**, Criminal Appeal No. 173 of 2014, **Solomon Mazala v. Republic**, Criminal Appeal No. 136 of 2012 (both unreported) and **Robert Andondile Komba** (supra), however, the appellant was aware he was charged as such. He did not raise any alarm then and never stated that as a defence. We note that the appellant stated his age as being eighteen when he testified in court as appearing at p. 116 of the record of appeal. But then, that could not be true as it does not augur with his argument that he was of that age when the offence was committed. The charge sheet indicates that the offences were committed starting from the month of November, 2016 and the record shows further that the appellant testified on 05.09.2017. In the circumstances, he could not be of the same age at the

time the offences were committed and at the time he testified. The appellant's complaint is disproved by the record itself. We dismiss it complaint for being an afterthought.

The appellant also complained in ground five of the memorandum of appeal that the ages of the victims were not proved beyond reasonable doubt. He argued that age is an important element in statutory rape, the offence with which he was charged. He thus argued that age ought to have been proved and placed reliance on our decision in **Robert Andondile Komba** (supra) for that argument. As the age of the victims was not proved, he argued, the charges levelled against him were not proved as well. On the other hand, it was the argument of the learned State Attorney that the age of the appellants was proved by PW16. He added that every victim stated his age and the appellant never cross-examined on it and, therefore, that should be taken that he accepted what the victims stated.

We, agree with the appellant that the victims did not testify on their age. What they said before they testified in which they stated their respective ages is not evidence – see: **Andrea Francis, Solomon Mazala** and **Robert Andondile Komba** (all supra) and cannot be relied upon as

proof of their respective ages. However, as rightly submitted by the learned State Attorney, PW16 testified on the age of each victim as appearing at pp. 95 and 96 of the record of appeal. PW16, as a medical practitioner, is one of the competent persons to prove the age of the victims – see: **Issaya Renatus v. Republic,** Criminal Appeal No. 542 of 2015 (unreported), **Issa Reji Mafita v. Republic,** Criminal Appeal No. 337 'B' of 2020 (unreported) and **Wilson Elisa @ Kiungai** (supra). The age of a person may be proved by the victim, relative, parent, or, where available, the birth certificate. The appellant's complaint is therefore without basis. It is dismissed.

The complaint in ground six of the memorandum of appeal to the effect that the PF3s (Exh. PE1) were not read out in court after admission in evidence will not detain us. As rightly put by the learned State Attorney, the same were read out loud in court after they were admitted. This is borne out by the record of appeal at pp. 95 and 96. As the appellant's complaint is not backed up by the record of appeal, we dismiss it.

We wish to, quickly, address the complaint by the appellant to the effect that the sentence was illegal in respect of some of the counts in that not all of the victims were below the age of ten years to deserve a sentence

of life imprisonment. We agree with him. As appearing at pp.95 and 96 of the record of appeal, only PW5, PW7, PW8 and PW9 were under the age of ten years thus befitting the sentence of life imprisonment in terms of section 131 (3) of the Penal Code. PW4 and PW6, though children of tender age, were not below ten years of age. Thus, the sentence in their respect ought to have been "imprisonment of not less than thirty years with corporal punishment, and with a fine, and shall in addition be ordered to pay compensation of an amount determined by the court, to the person in respect of whom the offence was committed for the injuries caused to such person", in terms of section 131 (1) of the Penal Code. We thus find merit in this complaint. We shall make an appropriate order at the end of this judgment.

In view of the discussion above, it is our considered opinion that the prosecution proved the case against the appellant beyond reasonable doubt. The convictions were therefore deserving. However, as for sentence, with regard to the offence of rape against PW4 and PW6 who were not below the age of ten years of age, a sentence of life in prison was not deserving. The sentence should have been as stated above. In the circumstances, we set aside the sentence of life in prison in respect of the convictions against the

charges involving PW4 and PW6 and substitute it with one of thirty years and twelve strokes of the cane. The sentences were ordered to run concurrently. We endorse the order by the trial court and upheld by the first appellate court.

Given the above reasons, and with the foregoing minor rectification of sentence, we generally find no merit in this appeal and dismiss it.

DATED at **DAR ES SALAAM** this 16th day of February, 2023.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

P. F. KIHWELO
JUSTICE OF APPEAL

The Judgment delivered this 20th day of February, 2023 in the presence of the appellant in person and Ms. Akisa Mhando, learned State Attorney, for the Respondent/Republic through video link is hereby certified as a true copy of the original.

A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL