

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**PC CRIMINAL APPEAL NO 4 OF 2020**

*(Original from judgment of the District of Bariadi in Criminal Appeal No. 45 of 2019 originating from Criminal case No 164 of 2019 of Somanda primary court)*

**KUSEJA KILILI.....APPELLANT**

**VERSUS**

**RAMADHANI SAID..... RESPONDENT**

**EXPARTE -JUDGEMENT**

*Date of Last order: 23.9.2020  
Date of Judgment: 30.10.2020*

**MKWIZU, J.:**

The district court dismissed the appellants appeal originating from the primary court where his assailant, Respondent in this matter, **Ramadhani Said** was acquitted in a charge of assault causing bodily harm c/s. 241 of the Penal Code, [Cap. 16, R. E. 2002]. The reason for the dismissal of the appeal by the District Court was that offence of assault against the respondent was not proved beyond reasonable doubts.

Appellant is dissatisfied with that decision. He thinks , the case against the respondent was made.He has come to this court with three detailed grounds of appeal which can be summarized thus:

1. The district court failed to consider that the appellant proved the case against the respondent beyond reasonable doubts
2. The trial court erred in refusing to accept in evidence a copy of the PF3 while the original copy was nowhere to be found
3. The trial court erred in not finding the respondent guilty of the offence of attempting /threatening to murder the appellant despite the evidence on the records.

When the matter came for hearing on 23/9/2020, respondent who was duly served made no appearance. The matter therefore proceeded ex-parte against him hence this ex-parte decision. Appellant was in person, unrepresented.

Appellant argued the 2<sup>nd</sup> ground only. He submitted that his dissatisfaction lies with the refusal by the trial court to admit in evidence the PF3 which intended to prove that he was assaulted. He said , the court

wanted him to tender the original copy which was not available as it got lost at the police. He invited this court to allow the appeal.

I have cautiously evaluated the evidence on the records and the appellants grounds of appeal. The issues for determination so to say are whether the trial court had any reason in refusing admission of the PF3 as evidence and two whether the offence was proved beyond reasonable doubts. The two issues cover the 1 and 2 grounds of appeal. The third ground of appeal is, in my view a misconception. It introduces on appeal a new offence /charge of which the respondent was not charged with. I find it baseless and outrightly dismissed.

Before I venture to the issues, I find it to set the backgrounds facts of the matter. The records are to the effect that appellant and the respondent are rivals. Apart from this criminal case, appellant's evidence at the trial court discloses that they have other three cases appellant being the complainant against the respondent. The records disclose that appellant was assaulted while on the process of serving the respondent with a summons in respect



of another case between the parties. The matter was reported to the police and appellant was issued with the PF3 for treatment. On the other hand respondent denied the allegation.

My review of the evidence, reveals that apart from testifying that he was given PF3 for treatment, appellant's evidence does not disclose whether attended any hospital for treatment. The said PF3 was also not tendered as evidence at the trial court. The trial court as well as the first appellate court was of the view that appellant failed to prove the charge against the appellant. I support their view.

The appellant's evidence was too shallow to prove the offence of assault causing bodily harm. Again, as stated above, no attempt was made by the appellant to tender in evidence the copy of the alleged PF3. The offence was without doubt not proved, consequently, an opposed appeal is without merit. It is dismissed in its entirety.

It is so ordered.

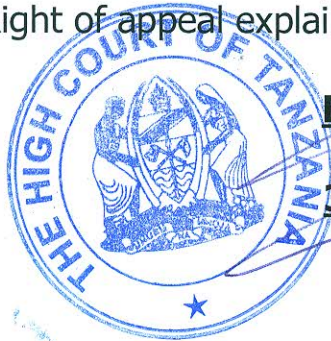
**DATED at Shinyanga this 30<sup>th</sup> day of October, 2020.**

  
**E.Y.MKWIZU**

**JUDGE**

**30/10/2020**

**COURT:** Right of appeal explained



**E.Y.MKWIZU**

**JUDGE**

**30/10/2020**