THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

AT MBEYA

CRIMINAL APPEAL NO. 103 OF 2020.

(Original Criminal Case No. 151 of 2019, in the District Court of Kyela District, at Kyela).

IPYANA S/O MWAMBETE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

16/11/2020 & 15/02/2021.

UTAMWA, J.

In this first appeal, the appellant, IPYANA S/O MWAMBETE challenged the judgement (impugned judgement) of the District Court of Kyela District, at Kyela (trial court) in Criminal Case No. 151 of 2019. Before the trial court the appellant stood charged with one count of rape contrary to section 130 (1), (2) (e) and 131 (1) of the Penal Code, Cap. 16 R. E. 2002 (now R. E. 2019), henceforth the Penal Code. It was alleged that, on 8th day of September, 2019, at Ipinda area within Kyela District in Mbeya Region, the appellant did unlawfully have carnal knowledge of one T d/o D (a branded name for preserving her dignity), a girl aged 4 years.

The girl will hereinafter be called the complainant for purposes of convenient in the discussions under this judgment.

When the charge was read to the appellant before the trial court, he pleaded not guilty, hence a full trial. Five prosecution witnesses testified and the appellant made a sworn defence. He also called two witnesses to support his defence. At the end of the trial, the trial court found the appellant guilty, convicted and sentenced him to life imprisonment.

Aggrieved by the conviction and sentence, the appellant preferred this appeal through Mr. Kamru Habibu, his learned counsel. His petition of appeal is based on six grounds of appeal. However, the same can be smoothly condensed to only four as shown below:

1. That, the trial court erred in law and fact in convicting and sentencing the appellant though the prosecution had not adduced sufficient evidence to prove the charge beyond reasonable doubts.
2. That, the trial court erred in law in conducting the preliminary hearing contrary to the law.
3. That, the trial court erred in law in not taking into account the appellants' defence evidence.
4. That, the trial court erred in law in not affording the appellant a fair trial.

Owing to the above grounds, the appellant urged this court to allow the appeal, quash the conviction, set aside the sentence and set him free.

The respondent objected the appeal. The same was argued by way of written submissions. The appellant's submissions in chief were presented

by his counsel. The respondent's submissions were drawn and filed by Mr. H. Kihaka, learned State Attorney.

Regarding the first improvised ground of appeal, the learned counsel for the appellant essentially argued that, the evidence of the complainant (PW. 1) and that of the PW. 2 were contradictory. The complainant testified that the offence was committed on 8th September, 2020, they (PW. 1 and other people) went to a police station and then to hospital. On the other side, PW. 2 (mother of the victim) testified that, the said 8th September, 2020 was the date when her neighbour, one Wema informed her on the commission of the offence. However, the prosecution did not call the said Wema as witness. PW. 2 did not also investigate the victim's private parts to see if she had semen or fresh bruises or blood given the fact that the complainant was aged only four years. The PW. 3 (the Doctor who examined the victim) did not also find sperms in the complainant's vagina for conducting sperm analysis since 48 hours, computed from the material time, had lapsed. That trend showed that she had not been raped on the material date. The PW. 4 (a local leader) and 5 (investigator) did not also establish that it was the appellant who had committed the offence. The evidence thus, leaves doubts.

The learned counsel further contended that, the evidence of the victim as the single eye witness must be analysed with extreme caution so as to base conviction. He supported the contention by the case of **Nelson Onyango v. Republic, Criminal Appeal No 49 of 2017, Court of Appeal of Tanzania (CAT), at Mwanza** (unreported).

It was also the contention by the learned counsel for the appellant that, the PF3 of the complainant was wrongly tendered. The procedure requires a witness to request the leave of the court to tender a document as exhibit, the accused is given an opportunity to react against it and the court admits it if it is admissible. In the case at hand however (at page 11 of the proceedings of the trial court), the witness (PW. 3) was only called upon to identify the PF. 3 and the appellant was asked if he was objecting the same without being informed of the kind of objection he had. The court then admitted the same in evidence. This course offended the law. He supported this argument by the case of **Robinson Mwanjisi and others v. Republic [2003] TLR 218.** That case, he argued, held that, a document introduced in evidence has to be cleared for admission and actually admitted, before it is read out. This procedure is for purposes of avoiding an impression that the court was influenced by the reading.

The learned counsel for the appellant also contended that, in the case of **Iddi Abdllah @ Adam v. Republic, Criminal Appeal No. 202 of 2014, CAT, at Mwanza** (unreported), it was held that, failure to give an opportunity to an accused to comment on admissibility of an exhibit before admitting it in evidence is a serious irregularity and the same becomes liable to be expunged from the record. The learned counsel thus, urged this court to expunge the PF. 3 (exhibit P. B) from the record of the trial court.

Regarding the second ground of appeal, the learned counsel for the appellant argued that, the trial court erroneously conducted the preliminary hearing contrary to section 192(1), (2) and (3) of the Criminal Procedure

Act, Cap. 20 R. E. 2002 (Now R. E. 2019), henceforth the CPA. The record of the trial court shows that the prosecutor prayed to read the facts of the case and the trial court recorded the memorandum of facts and the disputed facts. It then recorded that the appellant had understood the facts and both sides signed. It was however, expected that, the trial court could record the ascertained undisputed facts, prepare the memorandum of agreed matters and read it to the parties as directed by the law cited above. This procedure was not followed in the matter at hand. The irregularity thus, rendered the proceedings a nullity in law. He cemented the contention by the case of **Efraim Lutambi v. Republic [2000] TLR 256.**

The learned counsel for the appellant further contended that, failure to prepare the memorandum of agreed matters, and to read and explain it to an accused person is non-compliance with section 192 of the CPA. The omission amounts to a failure to conduct a preliminary hearing and is fatal to the proceedings. Due to that omission, nothing shall be deemed to have been proved as guided under section 192(4) of the CPA. He supported this particular contention by the holding of the CAT in the case of **Republic v. Abdllah Salum Haji, Criminal Revision No. 4 of 2019, CAT at Dar es Salaam** (unreported).

In relation to the third ground of appeal, the learned counsel for trhe appellant submitted that, according to the impugned judgment, the trial court did not consider the appellant's defence that he could not rape three children at a time within a span of one hour. The trial court ought to have positively considered that fact in favour of the appellant, considering the

fact that no semen, bruises or blood were found in the complainant's body. In law, failure to consider the accused's defence is fatal as guided by the CAT in the case of **Hussein Idd and another v. Republic [1986] TLR 166.**

It was the submissions by the appellant's counsel concerning the fourth ground of appeal that, the appellant was denied a fair trial by the trial court on the following grounds; that, he faced three criminal cases at a time, i. e. the case from which this appeal originated and two others. The three cases arose from the same transaction related to the alleged rape of three children. The cases were heard and decided by the same magistrate, the witnesses were the same. The respective judgements were also pronounced on the same day. The proceedings and judgement regarding the respective cases were also similar. He added that, though no law prohibits the course taken by the trial magistrate, criminal justice would require the three cases to be heard by different magistrates so as to avoid apprehension of bias. He supported the contention by the case of **Charles Mayunga @ Chizi v. Republic, Criminal Appeal No. 493 of 2015, CAT at Tabora** (unreported). In that case, he argued, it was guided that, a fair trial includes a trial before an impartial adjudicator, a fair prosecutor and atmosphere of judicial calm and a trial in which bias or prejudice against the accused, witness or cause being tried is eliminated. He further contended that, this is not a fit case to order a retrial. He based this particular contention on the case of **Fatehali Manji v. Republic [1966] EA. 343.**

In his replying submissions, the learned State Attorney for the respondent basically argued in relation to the first ground of appeal that, though it is true that in law the prosecution is duty bound to prove a charge beyond reasonable doubts, that does not mean that the proof must be beyond any doubt. What matters is that, the proof should make the court feel that the accused committed the offence at issue. He supported the contention by the case of **Magendo Paul and another v. Republic [1993] TLR. 2020** that followed the holding by Lord Denning in the case of **Miller v. Ministry of Pensions (1947) 2 ALL ER 372.** In that **Miller Case,** he contended, it was held that, the law would fail to protect the community if it admitted fanciful possibilities to defeat justice. He added that, where there is strong prosecution evidence against an accused, then remote possibilities in his favour can be dismissed and a finding that the case has been proved beyond reasonable doubts should be reached.

The learned State Attorney further argued that, according to section 130(4)(a) and (b) of the Penal Code, the offence of rape can be constituted by a mere penetration, however slight. Evidence on resistance such as physical body injuries is not necessary in proving the offence. In the matter at hand, the evidence of PW. 1 (complainant) proved rape since she testified that, the appellant had penetrated his penis into her vagina to the extent that she suffered from pains and shouted. The law further guides that, in proving a sexual offence the victim is the best witness as guided in the cases of **Seleman Makumba v. Republic [2006] TLR. 379** and **Tumaini Mtayomba v. Republic, Criminal Appeal No. 217 of 2012, CAT at Mwanza** (unreported).

Moreover, it was the argument by the learned State Attorney for the respondent that, section 127(6) of the Evidence Act, Cap. 6 R. E. 2019 guides that, a child-witness can be credible and can prove a sexual offence without any other corroborative evidence. The trial court thus, rightly found the complainant as reliable and competent witness. She was in fact, consistent in her evidence and the appellant did not even cross examine her on facts that implicated him, like his identification (as shown at pages 5-6 of the proceedings of the trial court). He added that, in law the trial court has the monopoly of determining the credibility of a witness, and this court, as an appellate court cannot interfere its finding unless there are good reasons to do so. He supported this particular contention by a decision in **Ali Abdallah Rajabu v. Saada Abdallah Rajabu and others [1994] TLR. 132** and **Omari Ahmed v. Republic [1983] TLR. 52.**

In his further arguments, the learned State Attorney submitted that, PW. 2 also testified that, upon his arrest, the appellant admitted to have committed the offence and pleaded not to be subjected to law authorities (as shown at page 8 of the proceedings). The appellant did not challenge this fact in cross-examining PW. 2. The law also commands that, failure by an accused person to cross examine a witness on an implicating fact, implies that the fact is true. This position of the law was underlined in the cases of **George Maili Kemboge v. Republic, Criminal Appeal No. 327 of 2013, CAT at Mwanza** (unreported) and **Nelson Onyango v. Republic, Criminal Appeal No. 49 of 2017, CAT at Mwanza** (unreported).

In relation to the way the PF. 3 of the complainant was admitted in evidence, the learned State Attorney submitted that, the same was tendered in evidence by PW. 3 (as per page 11 of the proceedings). The appellant was given chance to comment on the same and he was recorded saying that he had no objection against it. The court admitted the same and marked it as exhibit. The same was accordingly read to the accused in court. The learned State Attorney also argued that, even if it is found by the court that the PF. 3 was wrongly admitted in evidence, the evidence of the complainant sufficed to prove the charge against the appellant.

Regarding the second ground of appeal, the learned State Attorney briefly contended that, according to the record (page 3-4 of the proceedings), the preliminary hearing was duly conducted and the appellant signed the disputed matters. However, in case the court finds the preliminary hearing to be irregular, the remedy is to nullify the proceedings and order a retrial.

Concerning the third ground of appeal, the learned State Attorney conceded that the trial court did not consider the defence evidence in evaluating the evidence. What it did was only to summarise the evidence of both sides. Nonetheless, this court, as the first appellate court has powers to evaluate the evidence afresh and make a finding. He cited the case of **Prince Charles Junior v. Republic, Criminal Appeal No. 250 of 2014, CAT, at Mbeya** (unreported).

In his replying submissions regarding the fourth ground of appeal, the learned State Attorney also conceded that, the appellant was not afforded a fair trial because, the trial magistrate knew the evidence of all

the three cases by then. He however, prayed for this court to order a retrial since there is sufficient evidence against the appellant and he has only served a short period of his imprisonment, to wit; only six months.

I have considered the arguments by both sides of this appeal, the record and the law. I now proceed to examine the grounds of appeal. For purposes of convenience, I opt to begin with the fourth ground because, according to its nature, if it will be upheld, it will render other grounds of appeal insignificant. In case need will arise, I will then test the third ground of appeal, the second and lastly the first.

I now examine the fourth ground of appeal. Before I go further in testing this ground, I feel indebted to make some important remarks on the parties' submissions regarding this ground. As shown above, the parties are at one that the appellant was not afforded a fair trial because, the same magistrate heard and decided all the three cases against the appellant. The same witnesses gave similar evidence before him regarding all the cases. My emphasis here is that, though the parties to this appeal agreed on that aspect, it is not necessary in law, that this court blesses their consensus. This follows the firm and trite legal stance that, courts of law are enjoined to decide matters before them in accordance with the law irrespective of the attitude taken by the parties to court proceedings; see also the holding in **John Magendo v. N.E.Govani (1973) LRT. 60**. This is the very spirit underscored under article 107B of the Constitution of the United Republic of Tanzania, 1977, Cap. 2 R. E. 2002 (the Constitution). I also underscored this position of the law in my previous decisions including **Rashid s/o Khalid @ Masanja v. The Republic, High Court Criminal**

Application No. 36 of 2015, at Tabora (unreported). I also reiterate the position in the appeal at hand. I will now proceed to test the fourth ground of appeal while observing the above mentioned firm principle.

The major issue regarding the fourth ground of appeal is therefore, *whether or not the appellant was denied a fair trial in the matter under consideration.* In my concerted view, I do not think if the circumstances of this case attract a positive answer to this issue. This is so because, it is not disputed according to the record that, the appellant allegedly raped three children at a single occasion. The said offences thus, were allegedly committed in the same series of events of the same or similar nature. According to section 133(1), (2) and (3) of the CPA, such offences could be charged in a single charge sheet in different counts, unless justice demanded a separate trial. Now, it is apparent that the prosecution in the matter at hand, found it necessary for the three offences to be charged and tried separately. It follows thus, that, the contention by the learned counsel for the appellant that the law would need the three offences to be tried by different magistrates is not backed by any law and the learned counsel did not cite one.

Moreover, the arguments by the learned counsel for the appellant seems to be based on a mere fear or apprehension of bias on the part of the trial magistrate. There is no any tangible evidence of such bias. Courts of law do not peg decisions on such mere fears, especially when serious allegations like that of being bias are raised against adjudicators. In the case of **Laurian G. Lugarabamu v. Inspector General of Police and the Attorney General, CAT Civil Appeal No. 13 of 1999, at Dar es**

Salaam (unreported), the CAT held that, an allegation of bias against a judge or magistrate can be raised only where some conditions are met. Such conditions include the following; if there is evidence of bad blood between the litigant and the Judicial Officer, if he/she has close relationship with the adverse party or one of them and if he/she or a member of his/her family has an interest in the outcome of the litigation other than the administration of justice. Mere apprehension of bias cannot thus, be considered as sufficient reasons for the allegations made by the appellant's counsel in the matter at hand.

It must also be noted that, judicial officers take oaths before they take judicial offices. The oath is intended to ensure compliance with the law and ethics in performing their duties. Their primary duty is in fact, to decide cases fairly and according to justice. They are also guided by judicial ethics and their Code of Conduct. Regulation 9(1)(c) of the Code of Conduct and Ethics for Judicial Officers, 2020 (made under the Judiciary Administration Act, Cap. 237) for example, guides that; a judicial officer shall disqualify himself in any case in which that judicial officer has a personal bias or prejudice concerning a party or personal knowledge or facts. The phrase "personal knowledge of facts" under the regulation just cited above does not refer to evidence given in a case of similar nature, but to facts which a judicial officer witnessed and are related to the case he is presiding over. Owing to these arrangements and safeguards related to the performance of judicial office duties, one cannot support the unanimity of the two learned legal minds and hold that the trial magistrate in the case at hand was biased in deciding the case under consideration. It

is more so in the absence of any tangible evidence supporting the allegation or the apprehension.

In fact, the applicable procedure when a party to court proceedings has evidence of bias against a judicial officer trying his rights is this; the party rises the concern before the presiding Judicial Officer in court, the judicial officer hears both sides and makes a finding on the issue of whether or not he should recuse himself. This course makes the process to be part of the court proceedings for consideration by an appellate court or by any reader of the record. However, in the matter at hand, the record of the trial court does not show that the appellant attempted at any stage of the trial to raise the issue of bias on the part of the trial magistrate. It follows thus, that, raising the same at this appellate stage, amounts to an afterthought which cannot help him. It is more so since the matter was not raised and decided by the trial magistrate. It will thus, be unfair to fault him in this appeal for a matter on which he did not decide.

Owing to the reasons shown above, I answer the major issue posed above regarding the fourth ground of appeal negatively that; the appellant was not denied a fair trial in the matter under consideration. I consequently dismiss the fourth ground of appeal. This finding attracts testing the third ground of appeal as planned before.

Regarding the third ground of appeal, the following two issues need to be answered by this court;

i. *Whether or not the trial court in fact, failed to consider the defence evidence.*

ii. *If the answer to the first issue is affirmative, then what is the effect of the omission.*

As to the first issue, the parties were again, in consensus that the trial court failed to consider the defence evidence. However, I do not support that concurrence on the following grounds: according to the impugned judgment of the trial court, it is clear that, the trial magistrate narrated the evidence of both the prosecution and the defence from page 1-3 of the impugned judgment. At that third page, he posed the issues of "*whether PW. 1 was raped and whether the evidence pointed the accused as the person who raped her.*" It is further clear that, from page 4 (the last paragraph) of the impugned judgment, the trial magistrate considered and evaluated the defence evidence up to page 5 (the first paragraph). He then rejected the defence and I quote the pertinent paragraph rejecting it:

> "I find no weight on this defence since the accused has only focussed much on his possibility of raping three children at a single hour. This kind of misgiving cannot exonerate him from the wrath impending towards his path. He fell short to understand that in proving rape the court will rely on the ingredients of rape and the testimony from the victim."

Owing to this trend, it cannot firmly be argued that the trial court skipped to consider or evaluate the defence evidence. I therefore, answer the first issue negatively that, *the trial court did not fail to consider the defence evidence.* This finding makes the examination of the second issue under the third ground of appeal needless since its consideration depended on the first issue being answered affirmatively as shown earlier.

Indeed, had the first issue (under this ground of appeal) been answered affirmatively, I would agreed with the learned State Attorney for

the respondent that, in law, the remedy for the irregularity is for this court, as a first appellate court, to evaluate the defence evidence afresh.

Due to the reasons shown above, I overrule the third ground of appeal the way I did to the fourth ground of appeal. This finding calls for the examination of the second ground of appeal as arranged earlier.

Concerning the second ground of appeal, there are also the following two issues to be determined;

A. *Whether the trial court in fact, erred in law in conducting the preliminary hearing.*
B. *If the answer to the first issue will be affirmative, then what is the legal remedy for the abnormality?*

Regarding the first issue under this ground of appeal, I totally agree with the learned counsel for the appellant that the preliminary hearing conducted by the trial court was fatally irregular. As rightly argued by him, the major purpose of preliminary hearing under section 192 of the CPA is to ascertain undisputed facts. The ultimate goal of this process is thus, to speed up the trial by reducing the number of witnesses, the time of trial and costs for the same. One would thus, expect to see in the record among other things, facts of the case which were read to the appellant and a memorandum of agreed matters signed by the parties. Facts embodied is such memorandum are deemed proved and need no formal proof; see section 192(4) of the CPA. Nonetheless, all these features are not available in the record of the trial court. Instead, it only made a memorandum of facts and a list of disputed facts. The parties signed under the list of disputed facts. In my view, such disputed facts are irrelevant as far as

section 192 of the CPA is concerned. The contention by the learned State Attorney for the respondent that the preliminary hearing was properly conducted is thus, untenable.

Owing to the reasons shown above, I answer the first issue regarding the second ground of appeal affirmatively that, in fact, the trial court erred in law in conducting the preliminary hearing. This finding calls for the examination of the second issue under this second ground of appeal.

In relation to the second issue (under this second ground of appeal), I support neither the appellant's counsel nor the learned State Attorney. In my view, since it is not on record that the appellant was convicted on the basis of any fact embodied in any memorandum of agreed matters made in conducting the irregular preliminary hearing, it cannot be argued that the irregularity had prejudiced the appellant. In fact, even the learned counsel for the appellant did not point out any prejudice against his client. The proper remedy is thus, not to vitiate the entire proceedings of the trial court as envisaged by the appellant's counsel or to order for a retrial as contended by the State Attorney for the respondent. In my concerted view, the viable remedy under the circumstances of the case at hand, is to nullify only the proceedings of the preliminary hearing and save the rest of the proceedings of the trial court. This particular view constitutes the answer to the second issue under this first ground of appeal.

Due to the reasons shown above, I hereby nullify the proceedings for the preliminary hearing conducted by the trial court on 24th September, 2019 (as demonstrated at pages 3-4 of the typed proceedings). Nonetheless, the rest of its proceedings remain intact. I therefore, partially

uphold the second ground of appeal and partially dismiss it as shown above. This findings demands the examination of the first ground of appeal as set previously.

As to the first ground of appeal, the issues to be determined are likewise, two as shown below;

a. *Whether the prosecution proved the case against the appellant beyond reasonable doubts before the trial court.*
b. *In case the answer to the first issue is positive, then whether or not the sentence imposed by the trial court against the appellant was proper.*

I will now test the first issue under this first ground of appeal. In my settled views, the evidence against the appellant was sufficient enough to implicate him as rightly argued by the learned State Attorney for the respondent. This view is based on the following reasons: in the first place, the evidence of the complainant (PW. 1) was direct and consistent. She specifically testified that on the material date, the appellant inserted his penis on her vagina and she felt pains.

It must also be noted that, the appellant was a neighbour to the home of the complainant, hence she knew him well even before the event. She properly made her promise in court to speak the truth as required by the law. The complainant was thus, a credible witness. Her evidence was corroborated by the PW. 2 (Besta Obote Mwangobola), her own mother. The PW. 2 clearly testified on the age of the complainant being only four and a half years at the time of her (PW. 2) testimony (on the 5th of December, 2019). The complainant's age was a very important ingredient

to be proved in the matter at hand since the charge against the appellant was statutory rape. PW. 2 further testified that, when the appellant was mentioned by the complainant, he was arrested. He admitted the commission of the offence and pleaded not to be taken to legal authorities.

Moreover, there is the evidence by PW. 3 (Henry Gilbert Wambua), the clinical officer who medically examined the complainant. He testified that, his examination found that the complainant's hymen had been perforated by a blunt object. She made the PF. 3 and tendered it in court. The appellant did not even object the tendering of the PF. 3.

In my view therefore, all the PW. 1, 2 and 3 were witnesses of truth since the appellant did not cross examine them to the extent of shaking their respective testimonies. Besides, the law guide that, each witness is entitled to credence in his/her testimony unless there are good reason for not believing him; see the guidance by the CAT in the case of **Goodluck Kyando v. Republic, CAT Criminal Appeal No. 118 of 2003, at Mbeya** (unreported).

It follows thus that, all the contentions by the learned counsel for the appellant supporting the view that the charge was not proved beyond reasonable doubts against his client are found not forceful enough to affect the conviction. The contention that the PW. 2's neighbour, one Wema was called as a prosecution witness for example, is weightless since in law, evidence is not counted, it is o only weighed. This means that, even a single witness may prove a charge against an accused person. This is the spirit embodied under section 127(6) of the Evidence Act as far as sexual offences are concerned, and as correctly put by the learned State Attorney

for the respondent. Again, the argument that the complaint was not found with any semen, blood or fresh bruises on her private parts is untenable since rape can be proved without any ejaculation by a rapist, bruises or blood stains on the victim's private parts. As shown above, a mere penetration, however slight, may suffice. Regarding the alleged erroneous admission of the PF. 3 in evidence, I agree with the learned State Attorney that, the record shows that the same was tendered in evidence by PW. 3, shown to the appellant who was given opportunity to react, but he did not object the same. The appellant is thus, precluded from making such complaints at this appellate stage of the matter.

The appellant's pieces of evidence in his defence which was also supported by two other witnesses, did not also shake the prosecution evidence demonstrated above. His evidence that he did not rape the complainant, that she had been tutored to implicate him, that he was not at the scene of crime on the material date and that he could not rape three children at a time, could not, in my view, raise any reasonable doubt in the mind of the trial court or any sober court of law amid the sufficiency of such prosecution evidence. Indeed, since rape can in law, be proved by a mere slight penetration as shown earlier, a male person can rape even more than three children or women at a lesser time than an hour. The appellant's defence was thus, rightly rejected by the trial court.

For the reasons adduced above, I answer the first issue regarding this first ground of appeal affirmatively that, the prosecution proved the case against the appellant beyond reasonable doubts before the trial court.

Regarding the second issue under this first ground of appeal, I am of the view that, indeed, the sentence of life imprisonment imposed against the appellant was proper in law. The appellant's counsel did not also make any argument against the sentence apart from arguments attacking the conviction. I therefore, answer the second issue affirmatively that, the sentence imposed by the trial court against the appellant was proper.

Having observed as above, I hereby find that, this appeal lacks merits and I accordingly dismiss it. It is so ordered.

JHK. UTAMWA.
JUDGE

15/02/2021.

15/02/2021.
CORAM; J. H. K. Utamwa, Judge.
Appellant: Present (by virtual court link while in Ruanda Prison-Mbeya).
Respondent: Ms. Zena James, State Attorney.
BC; Ms. Gaudencia, RMA.

Court: judgement delivered in the presence of the appellant (by virtual court link while in Ruanda Prison-Mbeya) and Ms. Zena James, learned State Attorney for the respondent, in court, this 15th Frbruary, 2021.

J. H. K. UTAMWA
JUDGE
15/02/2021.