IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM SUB DISTRICT REGISTRY)

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 49 OF 2022

(Originating from the Decision of the District Court of Kibaha at Kibaha in Criminal Case No 115 of 2022 before F.L.Kibona -RM)

HAMAD ALLY @ MPEI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of last Order: 22nd August, 2022

Date of Judgment: 16th September, 2022

E.E. KAKOLAKI J.

Hamadi Ally @ Mpei is in this fountain of justice, struggling to prove his innocence by challenging the conviction and sentence of thirty years imprisonment passed by the District Court of Kibaha at Kibaha for the offence of Rape; Contrary to sections 130 (1), (2) (e) and 131 of the Penal Code, [Cap. 16 R.E 2019], now R.E 2022. It was prosecution case during trial that, the appellant on 23rd Day of June 2020 at Kilangalanga area within Kibaha District in Coast Region did unlawfully have sexual intercourse with **ZD** (name withheld), a girl of 11 years old. It is alleged further, that the incident

took place in the unused toilet where the appellant asked the victim to enter into, when she was collecting drinks bottle caps (visoda), undressed her and inserted his manhood into her private parts before he was witnessed by the neighbours who reported the matter hence his arrest, indictment and conviction.

When called to answer the charge against him, the appellant flatly denied the accusations the fact that moved the prosecution to procure eight (8) witnesses and tendered two (2) exhibits in a bid to prove its case, while defendant fended himself and procured two (2) witnesses to back up his evidence.

After full trial, appellant's version was not bought by the trial court, the court was satisfied that, the prosecution proved its case to the hilt, hence convicted the accused and awarded him a statutory sentence of thirty (30) years imprisonment. Discontented and protesting his innocence against conviction and sentence meted on him, the appellant has come to this Court armed with five (5) grounds of appeal, which were filed on 18th February 2022 and later on with leave of the court lodged five (5) supplementary grounds of appeal filed on 11th July, 2022, making a total of ten (10) grounds of appeal. After carefully examination of the said 10 grounds of appeal

raised, I am convinced that the same can be conveniently summarized into five (5) grounds going thus, ***One,*** that the evidence of PW1 was taken in contravention of section 127 (2) of the Evidence Act, ***two,*** that the appellant's defence evidence was not considered, ***three,*** the trial court convicted appellant while relying on the contradictory evidence of PW1 and PW2, ***Four,*** the trial court relied on incredible and untenable evidence of PW8 which do not connect appellant with the charge and ***five,*** failure of the trial Court to properly conduct preliminary hearing in contravention of section 192 of the CPA.

It is the appellant's prayer that, this Court allows the appeal, quash the conviction, acquit him and set aside the sentence meted on him. When the appeal was called up for hearing, appellant appeared in person unrepresented, while respondent was represented by Ms. Elizabeth Olomi, learned State Attorney. The appeal was disposed by way of written submission upon appellant's request which was not contested by the respondent. In determining this appeal, I prefer to determine the grounds of appeal summarized above as submitted on by the appellant. I will however start with the 1st ground then move to the 4th before I revert to the 2nd and 3rd grounds combined and lastly the 5th ground of appeal

Regarding the first ground of appeal, it was the appellant's submission that, there was non-compliance of section 127 (2) of the Evidence Act, [Cap 6 R.E 2019], for failure to record the questions posed to the child victim (PW1) during voire dire examination before her evidence could be taken. Referring the Court to page 7 and 8 of the typed proceeding he argued that, the trial magistrate recorded only answers without indicating the questions posed to PW1 to enable the court to determine her competence to testify. According to him and relying on the cases of **Mohamed Sainyenye Vs. R**, Criminal Appeal No. 57 of 2010, and **Hassan Hatibu Vs. R,** Criminal Appeal No. 71 of 2002 (both unreported), that omission discredited the testimony of PW1, hence it was wrong for the trial court to rely on such evidence to convict the appellant.

The appellant submitted further, the purpose of conducting voire dire test, is to determine the competence of a child of tender age, to testify in terms of her intelligence to understand questions put forward to her and give rational answer fro determination as to whether she understands the nature of oath and if she understands the same, his evidence will be taken under oath but if not, then evidence be taken without oath and corroborated before it is relied upon by the Court to convict the accused. He placed reliance on

the cases of **Kasiri Mwita Vs. R** (1981) TLR 218, **Dhahiri Ally Vs. R**, 1989 TLR 27, **Deema Daati and Two Others Vs. R,** Criminal Appeal No. 50 of 1994 and **Kimbute Otiniel Vs. R**, Criminal Appeal No. 300 of 2011 (CAT-unreported). On the case of **Kimbute Otiniel** (supra) he argued, the Court of Appeal insisted that, improper conduct of voire dire test reduces the testimony of the victim into unsworn evidence which requires corroboration before it can be relied upon to convict the accused person. He then prayed this Court to expunge evidence of PW1 from record in which if expunged, the remaining evidence cannot be relied upon to convict the accused for being hearsay as all the remaining witnesses were not at the scene but got the story from the victim.

Responding to this ground Ms. Olomi admitted that, PW1 as a child of tender age and as per section 127 (2) of the Evidence Act [Cap 6 R.E 2019], was required to promise the court to tell the truth and not to tell lies. She also admitted the fact that, when the Court was examining PW1 to know whether she understands the meaning of oath or the duty of telling the truth before promising to tell the truth, the trial magistrate recorded answers only. In her view, the trial magistrate's omission to record questions did not prejudice the appellant in any way as the answers given were the results of questions

asked and the same shows that the victim was intelligent enough to know that telling lie is a sin hence promised to tell the truth but not lies. Ms. Olomi referred the Court to page 7 and 8 of the proceedings where the trial court indicated that, the victim promised to tell the truth. In further her view echoed, since the trial court was satisfied the victim was telling nothing but the truth then, conviction could safely be entered against the appellant even in a situation where there was an omission to comply with the law. She contended that, the trial court relied on PW1's evidence which was also corroborated by the evidence of PW2, PW3, PW4, PW5 and PW8 to convict the appellant after being satisfied that she (PW1) was telling nothing but the truth. To fortify her stance, she relied on the case of **Wambura Kiginga Vs. R**, Criminal Appeal No 301 of 2018 (CAT-unreported) at page 27, where the Court of Appeal referred to the case of **Goodluck Kyando Vs. R** TLR [2006] 363, where it was held that, every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing the witness. It was her submission that, evidence of PW1 is credible and it was proper for the trial Court to rely on it to convict the appellant. In a short rejoinder appellant reiterated his submission in chief.

I have taken time to peruse the trial court's records in respect of the complaint raised in this ground of appeal as well as carefully considered the rival submission by both parties. It is true as submitted by the appellant that, it was once a requirement of the law under section 127 (2) of Evidence Act that, a trial magistrate or judge when conducting voire dire examination to the child witness, had to indicate whether or not a child of a tender age understands the nature of oath and the duty of speaking the truth. And further, if she possesses sufficient intelligence to justify the reception of her evidence. The same examination was to be conducted through questions and answers commonly known as voire dire test. Nevertheless, the position changed in 2016 by Miscellaneous Amendment Act No. 4 of 2016 following recommendations of the Court of Appeal in the case of **Kimbute Otiniel** (supra), where section 127 (2) was amended, by removing the requirement to conducting voire dire test. The current position is that, before giving evidence without taking oath or affirmation the child has to promise to speak the truth to the court and not to tell lies. See the case of **Godfrey Wilson Vs. R**, Criminal appeal No 168 of 2018 (Unreported) which gave the procedure on how the Court arrives to the conclusion that the child has promised to tell the truth and not tell lies to the Court including suggestions

of the questions to be put to the child witness. Further, as the law stands now, the said promise must be reflected in record, failure of which affects prosecution case. This principle was articulated in the case of **Yusuph Molo Vs. R**, Criminal Appeal No. 343 of 2017 (CAT-unreported), where the Court of Appeal had this to say:

> *"It is mandatory that such a promise* ***must be reflected in the record of the trial court.*** *If such a promise is not reflected in the record, then it is a big blow in the prosecution's case ... if there was no such undertaking, obviously the provisions of section 127 (2) of the Evidence Act (as amended) were faulted. This procedural irregularity in our view, occasioned a miscarriage of justice. It was a fatal and incurable irregularity. The effect is to render the evidence of PW1 with no evidentiary value. It is as if she never testified to the rape allegation against her. It was wrong for the evidence of Pw1 to form the basis of conviction…"*

In the present appeal, it is undisputed fact that, at the time of giving evidence, PW1 was a child of tender age, being of 11 years of age. As per the records at pages 7 to 8 of the typed proceedings, though not directly indicated the record suggests that, before PW1 had started testifying, the trial magistrate put to her some questions to elicit her understandings, where

she disclosed to the court the effect of telling lies before she promised to speak the truth to the court and not lies. For clarity this is what transpired in court on 14/09/2020 at page 7 and 8 of the typed proceedings:

> *PW1: Zaituni Hamisi, 11 years, and resident of Mlandizi, student, Zaramo by Tribe.*
>
> *Court: Pw1 is of tender age, below 11 years old.*
>
> *Signed: F. Kibona- RM*
>
> *14/09/2020*
>
> *PW1: I professing at mosque, always goes at holiday and I always goes to the school at Monday to Friday once you tell lies to somebody else you commit a sin I promise to tell the truth*.
>
> ***Court:*** *PW1 does not know the purpose of oath but promise to tell the Court the truth.*

I note further that, after examination of the child the trial Court was satisfied that she did not understand the nature of oath but promised to tell the truth hence proceeded to record her evidence. Under the circumstances the glaring question is whether failure or omission of the trial Court to record the

questions asked to the child witness amounts to non-compliance of section 127 (2) of TEA, in a current position of the law as submitted by the appellant. With due respect, I am of the considered view that, it does not as the object of putting questions to the child witness is to establish his understandings as to the nature of oath or affirmation and the duty of speaking the truth to the court before arriving to the conclusion that, the child witness has promised to tell the truth to the court and not lies. That is why the Court of Appeal in the case of **Godfrey Wilson** (supra) went further to suggest the questions to be asked to the child witness as guidelines so as to answer the question as to how the Court arrives to the conclusion that the child witness has promised to tell the truth and not lies. In **Godfrey Wilson** (supra) the Court of Appeal had this to say:

> *The question, however, would be on how to reach at that stage. We think, the trial magistrate or judge can ask the witness of a tender age such simplified questions, which may not be exhaustive depending on the circumstances of the case, as follows:*
> *1. The age of the child.*
> *2. The religion which the child professes and whether he/she understands thee nature of oath.*

3. Whether or not the child promises to tell the truth and not to tell lies.

Thereafter, upon making the promise, such promise must be recorded before the evidence is taken*. (Emphasis added).*

From the above excerpt, in my considered view what is mandatorily for the trial court to put on record is the answers obtained from the child witness on the guiding questions as suggested in **Godfrey Wilson** (supra) and the finding on the promise made by the witness to the court to tell the truth and not lies. In other words I would say an omission to record the said questions does not render the witness's testimony incredible under section 127(2) of Evidence Act as the object of examination of the child witness is to satisfy the court that, the child witness does not understand the nature of oath, hence unable to testify on oath or affirmation and that, he/she is promising to tell the Court the truth and not lies, before her/his evidence is recorded not on oath.

In the present appeal and as reflected in the excerpt above, the trial Court after putting some questions to PW1 as suggested in **Godfrey Wilson** (supra) went on to record the answers and satisfied in its findings that, PW1 promised to tell the truth and not lies, hence proceeded to record her

evidence not on affirmation. It follows therefore that even the cases cited by the appellant are inapplicable under the circumstances of this case as each case is decided on its own merits. It is from those reason, I find the first ground is wanting in merit hence dismiss it.

Next for consideration is the 4th ground of appeal where the appellant is faulting the trial court for relying on incredible and untenable evidence of PW8 to convict him while the same do not connect him with the charge he was facing. He lamented, the evidence of PW8 does not connect him with the offence of rape rather it establishes that, sexual intercourse was perpetrated against the victim. He relied on the case of **Gingi Pius Vs. The Republic**, Criminal Appeal No 264 of 2008, (CAT-Unreported).

Responding to this ground of appeal, Ms. Olomi submitted that, the evidence of PW8, the doctor who examined PW1, connects the accused very well with the offence of rape committed to PW1 since penetration of a female genital organs by a male sex organ in which PW8 testified on is an essential ingredient in proving the offence of rape. She relied on the case of **Wambura Kiginga (supra)**. I think this ground need not detain me much as there is no dispute that, when testifying PW8 did not mention the appellant as perpetrator of the alleged rape to PW1 apart from proving to

the court that, PW1's genital organ was penetrated by a blunt object such as penis or banana as bruises were found therein with hymen not intact. As rightly submitted by Ms. Olomi for the offence of rape to be proved penetration must be established and proved however slight it is. See the provisions of section 130(4)(a) of the Penal Code, [Cap. 16 R.E 2019] now [R.E 2022] and the cases of **Omary Kijuu Vs. R**, Criminal Appeal No. 39 of 2005, **Mathayo Ngalya @ Shabani Vs. R**, Criminal Appeal No. 170 of 2006 and **God Kasenegala Vs. R**, Criminal Appeal No. 10 of 2008 (all CAT). Thus, the issue as to whether PW8's evidence connected the appellant with charge, in my view cannot be concluded at this stage and under this ground as her evidence does not point directly to his guilty rather corroborates other prosecution evidence. This ground has no merit too.

I now move to jointly consider the 2nd and 3rd grounds of appeal as summarized above, in which the appellant faults the trial Court for convicting him relying on contradictory evidence of PW1 and PW2 and without considering his defence evidence. It is the appellant's contention that, in her evidence PW1 stated that after being raped when went back home, she was inspected by her uncle in her private parts and found to contain slippery water (fluid) while PW2 stated to the contrary that, at home they found her

grandmother who called the said uncle over phone and they did not examine the victim.

Regarding the trial court's failure to consider his defence while citing the provision of section 312(1) of Criminal Procedure Act, [Cap. 20 R.E 2019] now R.E 2022, the appellant argued that, the trial court judgment ought to have all the ingredients including critical analysis of both the prosecution and defence. He referred the Court to the case of **Amiri Mohamed Vs. R**, (1994) TLR 138 on inclusion of critical analysis of both prosecution and defence case. He said, in this matter the trial court judgment apart from summarizing the appellant's evidence neither considered not analysed defence case which its effect is to vitiate the conviction. He relied on the cases of **Hussein Idd and Another Vs. R**, (1986) TLR 166, **Alfeo Valentino Vs. R**, Criminal Appeal No. 92 of 2006 and **Yasin Mwakapala Vs. R**, Criminal Appeal No. 604 of 2015 (Both CAT-unreported) but not attached to the submission. On account of the above stated contradiction of the evidence of PW1 and PW2 as well as the omission by the trial Court to consider his defence, the appellant implored the Court to allow the appeal.

In rebuttal Ms. Olomi admitted that, it is true there was contradictions as to who examined PW1 between what was stated by PW1 and PW2. According

to her, that was a slip of tongue as PW1 meant to be inspected by PW3 and not her uncle and since PW3 proved to have inspected PW1 then her evidence corroborated with that of PW8 was enough to prove that, it is the appellant who raped PW1 as it is also PW3 and PW5 who saw the appellant coming out of the said unused toilet and reported him.

As regard to the complaint of omission by the trial court to consider appellant's defence evidence, according to Ms. Olomi, the trial court did consider the same a little bit and found out that it does not raise any doubt to the prosecution case, as the defence was trying to show the court that their hands are clean while in the eyes of the law they were dirty. In her view, even if the trial court did not consider the defence case then the principle of law is that, it is the duty of first appellate court to analyze and evaluate the whole evidence and come up with the right decision hence the irregularity can be cured by the first appellate court. She placed reliance on the case of **Wambura Kiginga** (supra) where it was held that, in case the trial court fails to consider defence evidence, then the first appellate court is mandated to step into the shoes of the trial court analyze the evidence and come up with the position that meets the end of justice. In a short rejoinder appellant reiterated his submission in chief.

I have dispassionately considered the fighting arguments by the parties herein. It is true as submitted by Ms. Olomi that, this court being the first appellate court is seized with jurisdiction to the review trial court's evidence and come up with its own findings. See the cases of **Peters Vs. Sunday Post Ltd.** (1958) E.A. 424 and **Demaay Daat Vs. Republic**, Criminal Appeal No. 80 of 1994 (CAT-unreported). In **Demaay Daat** (supra) the Court of Appeal had this to say:

> *"It is common knowledge that where there is misdirection and non-direction on the evidence or the lower courts have misapprehended the substance, nature and quality of the evidence, an appellate court is entitled to look at the evidence and make its own findings of fact."*

Basing on the above principle, I find it imperative to review the complained of trial court evidence between the two parties to establish whether the prosecution's case was proved to the hilt against the appellant on the charge of Rape; Contrary to section 130 (1), (2) (e) and 131 of the Penal Code, [Cap. 16 R.E 2019] and whether his defence was put into consideration. In this case, PW1 a child of 11 years old whose age was proved by her mother PW4 by an affidavit in proof of age exhibit P1 testified in court on how she met the appellant and got raped. She is recorded at page 8 of the typed

proceedings to have testified that, on the 23/06/2020 at about 03.00 pm, while collecting the drinks bottle caps (visoda) for school purposes was called by the appellant whom she identified as Amadi and they both entered into the toilet. That, the appellant unzipped his trousers and undressed her underwear (chupi), before he asked her to lay down and inserted his mdudu (penis) used for urination in her private parts which she uses for urination too (vagina) where he produced slippery water. And that, the appellant asked her not to shout. She testified further that, later on two persons came there and asked Amadi as to what he was doing there and he replied was just urinating as he was going to buy cigarette, but she (PW1) told them on how the appellant raped her before she was taken home. At home she found her grandmother who called her uncle and aunt Ashura before the uncle inspected her private parts which had slippery water and later on taken to police, with the papers issued by police and Mlandizi hospital where her sexual organ was examined. Her evidence of being witnessed coming from the said toilet with the appellant (identification) was corroborated by PW2 and PW5 who testified to have seen her with the appellant coming out of the toilet before she was taken home, where they met her grandmother and uncle. With that cogent and unchallenged evidence of PW1, PW2 and PW5

there is no doubt that the appellant was identified at the scene of crime as identification was done in a broad day light as he was known before to the identifiers who mentioned him by name.

PW3 on the other hand testified to the effect that, she examined PW1 in her private parts and saw slippery water and bruises and later on informed her mother before she took her Mlandizi police station for issue of PF3 and later on for medical examination.

As to whether PW1 was raped the law is very clear that the best evidence in sexual offences comes from the victim herself. See the case of **Selemani Makumba Vs. R**, [2006] TLR 379, which is in line with section 127(6) of the Evidence Act. In this case the best evidence is that of PW1 who clearly stated on how the appellant perpetrated the said rape. Her evidence and that of PW3 on existence of bruises, is corroborated by the testimony of PW8, the doctor who examined her. In her evidence PW8 who tendered the PF3 as exhibit P2 testified to the effect that, when examining PW1 she found her to have fresh bruises inside her vagina and she had no hymen. Her conclusion was that, she was penetrated with blunt object like penis or banana. With that evidence, I am therefore satisfied that, PW1 was raped as penetration was proved to have existed by PW3 and PW8 supported by

the PF3. It is the appellant's complaint that, PW2's evidence contradicted PW1's evidence on who examined her at home as PW1 said it was her uncle while PW2 said they did not examine her. It is a trite law that, every witness is entitled to credence and must be believed and his testimony accepted unless there are cogent and good reasons for not believing him/her which including the facts that, the witness has given improbable or implausible evidence or evidence has been materially contradicted by another witness. See the cases of **Goodluck Kyando Vs. R,** (2006) TLR 363 and **Mathias Bundala Vs. R,** Criminal Appeal No 62 of 2004. It was held by the Court in **Goodluck Kyando** (supra) that:

> *"Every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness."*

I have had an ample time to scrutinize the evidence of PW2 as given at page 10 of the typed proceedings, which is used by the appellant to contradict PW1's testimony and found that there is no such contradiction on whether PW1 was examined by her uncle in the private parts or not. For easy of reference I quote the excerpt from that part:

> *"The said girl is the one who wear a uniform of school at this court, we found her grandmother called her uncle. We told them what we witnessed as and later her uncle came.* ***We did not examine the girl when he came out, we saw him at the same time we saw the girl coming out****. We were looking each other. (Underline supplied)*

The above bolded evidence connotes that, PW3 together with PW5 did not examine PW1 at the scene of crime when she was coming out of the toilet together with the appellant. It is not at home as the appellant would want to suggest where PW1 contends was examined by her uncle, hence I don't find any contradiction on the evidence of PW1 and PW2 as both remain to be credible witnesses. Having so exhausted prosecution evidence I now turn to consider defence case.

It was the appellant's defence as DW1 before the trial court that, he never raped PW1 nor met her and PW2 at the scene of crime. He attacked PW1's evidence, when accused him of raping her, querying as to why she did not shout at the time she was raped. DW1 contended to have been framed up in this case as he stayed in the police lock up for one month and two weeks without being taken to court after being arrested at Msagagasa area on 23/06/2020. When cross examine whether he put some questions to PW1

on whether she knew him before or not confessed to have not done so. As regard to incarceration for one month he admitted to have been availed with bail and confessed to have no conflict or grudges with victim's aunt or anyone who arrested or testified against him. On further cross examination he said it is not necessary for someone to shout when having sexual intercourse. Appellant called in court DW2 and DW3 whose evidence was to the effect that they examined PW1 but did not see anything.

I have given the appellant's evidence the weight it deserves. It is the law that in criminal cases the accused does not have to prove his innocence but rather to raise doubt on prosecution evidence. Now the issue here is whether the defence raised by the appellant poses any reasonable doubt to the prosecution case. In my considered opinion it does not. While the appellant is denying to have met PW1 and PW2 at the scene of crime there is nothing raised by him to discredit their cogent evidence on his identification in a broad day light at the scene of crime, the evidence which was corroborated by the unchallenged evidence of PW5. All these witnesses were known to him before hence no reason to disbelieve them as the appellant confessed to have no any grudges with them or other prosecution witnesses who could have framed him up with that cases for any reasons. As regard to the

evidence of DW2 and DW3 that they examined PW1 and found her to have no scars in my opinion is not a conclusive evidence as when cross examined as to whether they had any medical knowledge both responded in negative. It follows therefore that their evidence could not displace or shake PW8's evidence who is a trained medical personnel to conduct medical examination, hence prosecution evidence on penetration was not shaken at any case by the appellant. I am therefore satisfied that the prosecution was able to prove its case beyond reasonable doubt.

Lastly is the fifth ground of appeal where the appellant submitted that, the trial magistrate failed to properly conduct the preliminary hearing, under section 192 of the CPA, for not listing down the number of witnesses and exhibits to be relied upon by the parties. According to the appellant section 192 of CPA was enacted for a sound reason of notifying the accused what lies ahead of him in the case, for the purpose of fair trial. He relied on the case of **Ephrahim Kitambi Vs. R,** Criminal Appeal No. 30 of 1996 (CAT) and prayed the Court to hold that ground of appeal has merit, hence the prosecution failed to prove its case beyond reasonable doubt. Responding to this ground of appeal, Ms. Olomi admitted the fact that, , the trial Court record does not show that, the list of witnesses and exhibits were mentioned,

but in per page 8 of the proceedings the public prosecutor informed the Court that, the prosecutions intend to call eight (8) witnesses and two (2) exhibits. It was Ms. Olomi's view that, failure to mention the names and exhibits during preliminary hearing is not fatal and is not contrary to the procedural law. She thus prayed the Court to find the ground unmeritorious. In a short rejoinder, appellant insisted that, the prosecution cannot call a witness whose statement was not read out during preliminary hearing, according to him, accused should be informed of what lies ahead of him and not to be taken by surprise.

Having considered both parties rival submissions, I think this point need not detain this court. I am at one with Ms. Olomi's proposition that, failure of the prosecution to mention and list down the prosecution witnesses and exhibits to be relied upon, does not vitiate the proceedings and as such did not prejudice the appellant anyhow since he was informed of the total number of 8 witnesses to be called and two exhibits relied on by the prosecution as submitted by the learned State Attorney. I so find as the purpose of conducting preliminary hearing under section 192 (2) of the CPA is to accelerate trial and disposal of cases by making sure that matters in dispute are identified, thus a number of witnesses is reduced, hence fair and

expeditious trial. See the cases of **Ephrahim Kitambi** (supra), **Tundubali Yumba Vs. R**, Criminal Appeal No. 70 of 2008 and **Issa Bakari and 4 Others Vs. R**, Criminal Appeal No. 121 of 2008 (All CAT-unreported). With the above reasons this ground also fails for want of merits.

That, said and done, I am satisfied that, the charge facing the appellant before the trial Court was proved by the prosecution to the required standard, hence he was rightly convicted and sentenced. Accordingly, this appeal is devoid of merit and I hereby dismiss it in its entirety.

It is so ordered.

DATED at DAR ES SALAAM this 16th day of September 2022.

E. E. KAKOLAKI

JUDGE

16/09/2022.

The judgment has been delivered at Dar es Salaam today 16th day of September, 2022 in the presence of the appellant in person, Mr. Genes Tesha, Senior State Attorney for the respondent and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.

E. E. KAKOLAKI
JUDGE
16/09/2022.