IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT MOROGORO

CRIMINAL APPEAL NO. 141 OF 2021

(Appeal from the Decision of the District Court of Ulanga, at Mahenge)

Before Hon. Masimbi, RM,

Dated 28th day of June, 2019

in

Criminal Case No. 93 of 2019.

MUSA NKWABI .....APPELLANT

VERSUS

THE REPUBLIC .....RESPONDENT

JUDGMENT

20th April & 8th July, 2022

CHABA, J.

The appellant, Musa Nkwabi, was arraigned before the District Court of Ulanga, at Mahenge in Criminal Case No. 93 of 2019 and convicted with the offence of rape contrary to sections 130 (1) and (2) (e) and 131 (1) of the Penal Code [Cap. 16 R. E. 2002], now [R. E. 2022] (the Penal Code). It was alleged by the prosecution that on 15th day of July, 2019 at or about 16:00 hours at Mbenja Village within Ulanga District in Morogoro Region, the appellant did have sexual intercourse with S d/o M, a girl aged 7 years old, who I shall henceforth be referred to as " PW1 or the victim", for purposes of concealing her identity.

The prosecution case which was believed and relied on by the trial court was founded on the evidence of three (3) witnesses namely, the

victim, Joyce Masunga (PW2) and Sosteness Makweta (PW3), a medical clinical officer. On the opponent, the defence had the appellant as the sole witness.

After a full trial, the trial court was impressed by the prosecution's version that the case against the appellant was proved to the hilt. Accordingly, the trial court found the appellant guilty as charged, convicted him and subsequently sentenced him to life imprisonment. However, in demonstrating his innocence, the appellant has knocked the door of this court armed with eight (8) grounds of appeal challenging the decision of the trial court. Before dealing with the grounds of appeal, I find it important to briefly give a background that led to the appellant's conviction.

The background of the matter as can be ascertained from the court record are as follows. On the material day or date on 15/07/2019, at or about 16:00 hours at Mbenja Village, within Ulanga District in Morogoro region, the victim was herding calves. Thereby, the appellant called and told her that he wanted to send her somewhere. Afterward, the appellant caught the victim, covered her mouth by his hands and started to play with her private parts (vagina), and thereafter he took his pennis and inserted into the victim's vagina. Upon arrived at home, the victim was crying and upon questioning by her mother (PW2), she told her that she was raped by the accused / appellant. She further explained what actually happened to her and she was bleeding. Upon physical inspection, PW2 revealed that the victim's vagina was bleeding and swollen. Her private parts had also some bruises and her hymen had been ruptured. Upon received the story, PW2 informed Mathias Fabian and Pascal who

immediately apprehended the appellant. Later, he was taken to the village chairperson and thereafter forwarded to Lupilo Police Station.

The victim was also taken to the nearest hospital at Lupiro Health Centre for medical examination and treatment as well. The Medical report prepared by the Medical Clinical Officer, Sosteness Makweta (PW3) suggested that the victim was raped. He tendered the report in evidence and admitted as Exhibit P1.

In his defence, the appellant denied the allegation and by stating that he did not commit the offence he stood charged. He told the trial court that he was staying/living at the house of Mahona Mabeseli, the father of the victim. He was a servant to Mahona Mabeseli who also gave him a shamba or parcel of land to cultivate his own paddy. At the time of his arrest, he had 27 bags of paddy. Sometimes Mahona Mabeseli borrowed him 10 bags of paddy, but he refused. Later, he wondered to see that he was put under arrest in connection with the offence of rape. He said, this case was fabricated by Mahona Mabeseli after he had refused to borrow him 10 bags of paddy.

As alluded to earlier on, after a full trial, the trial court believed the testimonies advanced by the prosecution witnesses and indeed it was impressed by the prosecution's version that the case against the appellant was proved to the hilt, that is beyond all reasonable doubt and it was safe to rely on. At the end, the appellant was convicted and sentenced as stated above.

Discontented by the trial court decision, the appellant knocked the door of this court armed with seven (7) grounds of appeal, which I reproduce them as follows:

1. *That, there existed procedural irregularities during the trial as the appellant was not informed of his rights from the time of his arrest up to conviction the facts that limits his right to prepare defense.*
2. *That, his cautioned statement was not read over to him after being taken by the police officers and he did not know what was written in.*
3. *That, PW1 was taken to hospital for medication upon the allegations raised against him (DW1), but he was not examined. If at all there were bruises on the private parts of PW1 as stated by PW3 likely the same had to be seen on the pennis of the appellant (DW1). The trial court magistrate misdirected her mind on this and occasioned failure of justice by leaving doubt on conviction.*
4. *That, PW2 one Joyce Masunga is the wife of his brother who kept on facing him (DW1) to have sex with her, but he denied. The evidence of PW1 was coached by PW2 following love jealousy that existed and the trial court erred in reasoning as to why no other independent witness to corroborate the evidence of PW1 and PW2.*
5. *That, there was no clear translation from PW1 and one KULWA MASHIMO (Translator) on point that; he, the appellant is a Sukuma by tribe and PW1 is Sukuma too. He could hear and understand what she transpired but the translators changed the meaning of what PW1 meant. Your Honorable Jugde, this misdirected court to convict the appellant on what translator stated and not what PW1 meant.*
6. *That, the appellants right to defend was curtailed. Since his advocate requested the court to cross examine PW1 and PW2 but the court didn't grant the chance following groundless objection by*

prosecution. All these are procedural irregularities prompted to unfair and unjust conviction.

7. *That, the court erred in law by admitting unsworn evidence of PW1 and PW2 which have no legal weight.*

8. *That, the trial court erred in law when admitting the evidence of PW1 without conducting voire dire examination to satisfy itself that she knows the "Duty to speak the truth". Short of that, the whole proceedings of the trial court are NULL and VOID and he prayed such evidence be expunged from the records.*

At the hearing of the appeal, the appellant appeared in person, unrepresented whereas the Respondent/Republic was represented Ms. Elizabeth Malya, learned State Attorney.

On being invited to elaborate his grounds of appeal, the appellant opted to let the learned State Attorney respond first and reserved his right to rejoin later, if need would arise.

At first, Ms. Malya prefaced her submission by supporting the trial court findings, conviction and sentence meted against the appellant. Taking the floor, the learned State Attorney proposed to start arguing the appeal with the first to six grounds appeal. She further proposed to combine grounds 7 and 8. Thus, starting with the 1st ground, Ms. Malya submitted that the appellant is complaining that the trial court proceedings were marred by existence of procedural irregulates and that he was not informed about his basic right since when he was arrested up to the time, he was convicted something caused him to prevent his right to fend for himself.

Responding to this complaint, Ms. Malya submitted that it is not true that the appellant was not afforded with the right to be heard. The appellant was well informed his rights in all stages. She referred this court to the typed trial court proceedings at page 1 and highlighted that section 132 of the Criminal Procedure Act [Cap. 20 R. E. 2022] (the CPA) was complied with. Again, the charge sheet shows that the appellant had the knowledge of the offence he stood charged. To prove that the appellant was afforded with the right to be heard, Ms. Malya submitted that the preliminary hearing was conducted and the appellant admitted some of the facts to the case and further admitted that he knew the victim and lastly fended for himself. She concluded that his complaint has no merit.

On the 2nd ground, Ms. Malya submitted that the court record is silent whether the alleged cautioned statement was tendered in court during trial or even used or applied in anyway. Thus, this ground is devoid of merit and baseless.

In respect of the 3rd ground, the learned State Attorney argued that it was very important for the victim to be taken to the hospital for medical examination and treatment because at the material time she had been sustained some injuries which resulted from insertion of a blunt object into her vagina. She averred that the evidence of the victim, her mother (PW2) and the medical clinical officer (PW3) showed that the victim sustained injuries on her private parts to the extent that PW2 was obliged to find a piece of cloth to cover her vagina so as to stop bleeding. She said, on his part the appellant did not raise any concern if at the material time had some injuries. The appellant also did not report at police station that he had some bruises or he sustained some injuries during sexual intercourse. She concluded that this ground also lacks merits.

Concerning ground 4, the appellant's complaint is that since his sister-in-law one Joyce Masunga (PW2) and the wife to his brother Mahona Mabeseli kept on facing him and severally tried to induce him making sexual intercourse and refused, she created hatred and love jealousy as a result she coached PW1 to testify against him and resulted to the present appeal. On the other hand, the trial magistrate also convicted him in absence of evidence from an independent witness to corroborate the testimonies advanced by PW1 and PW2. On this ground, the learned State Attorney submitted that section 143 of the Evidence Act [Cap. 6 R. E, 2019] does not require a certain number of prosecution witnesses to prove the offence.

The trial court upon heard PW1 and PW2 it believed their evidence and it found it proper and safe as well to rely on their testimonies to ground conviction of the appellant. She emphasized that the testimonies of PW1 and PW2 were corroborated by the evidence of PW3, a clinical medical officer and an independent witness. She submitted further that section 127 (1) of the Evidence Act (Supra) is clear that; every person shall be competent to testify unless the court considers that he is incapable of understanding the questions put to him or of giving rational answers to those questions by reason of tender age, extreme old age, disease (whether of body or mind) or any other similar cause.

On the basis of law, Ms. Malya underlined that the Republic believed that the prosecution witnesses gave evidence which were (are) worth of credit. She referred the court to the case of **Ngaru Joseph and Another v. The Republic**, Criminal Case No. 172 of 2019 (Unreported) in particular at pages 14 - 15 to fortify her argument. Again, she prayed the court to dismiss this ground for lack merit.

Responding to the 5th ground, learned State Attorney averred that this ground is an afterthought because when the said translator performed his work during trial the appellant was also present in court. If anything goes wrong the appellant was able and capable to inform the trial Magistrate. But he kept quiet until when the matter was reached at this stage of appeal. She rounded up by submitting that this ground has no merit

On the 6th ground, it is the appellant's complaint that his right to defend was curtailed because his advocate was not afforded with the right to cross examine both PW1 and PW2. In her submission, the learned State Attorney contended that the appellant was given his right as shown at pages 14 – 15 of the typed trial court proceedings, but did not exercise it because had no legal representation. As stated above, Ms. Malya insisted that the trial magistrate believed PW1 and PW2 and relied on their testimonies to arrive to the appellant's conviction. She maintained that, in **Abdul Mohamed Nawanga @ Madodo v. Republic**, Criminal Appeal No. 257 of 2020 (Unreported), the Court of Appeal of Tanzania, at page 21 of the typed judgment held among other things that, failure to cross examine her on this key aspect is clearly an acceptance of the truthfulness of the testimony.

In addition, Ms. Malya accentuated that section 147 (4) of the Evidence Act (Supra) the word **"may"** has been used to means that it is not mandatory. Therefore, there was no genuine reason(s) to recall the PW1 and PW2. The trial court had discretionary power to accept or reject the appellant's prayer.

Concerning grounds 7 and 8, she submitted that PW1 is (was) a child of tender age in accordance with the provisions of the law under section

127 (4) of the Evidence Act. She said, the law is clear that; for the purposes of subsections (2) and (3), the expression "child of tender age" means a child whose apparent age is not more than fourteen years. And under section 127 (2) the law provides that; 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 any lies. Ms. Malya asserted that the child performed her duty as shown at page 14 of the typed trial court proceedings.

She submitted further that, under section 4 (b) of the Oaths and Statutory Declaration Act [Cap. 34. R. E. 2019]; the law provides that; subject to any provision to the contrary contained in any written law, an oath shall be made by any person acting as interpreter of questions put to and evidence given by a person being examined by or giving evidence before a court. Hence, at page 14 of the typed proceedings the child did affirm in accordance with the provision of section 198 (1) of the CPA (Supra). She underlined that to conduct a *voire dire test* as it was held in the case of **Ngaru Joseph** (Supra) that, it is to contravene section 127 (2) of the Evidence Act (Supra) as laws stands now.

Based on the foregoing submission, the learned State Attorney prayed the court to dismiss the appellant's appeal as the same is lacking merits.

In rejoinder, the appellant began by giving his historical background since when he moved from Simiyu Region and arrived at Mbenja Village within the Ulanga District in Morogoro Region. In the said village, he was welcomed by his relative (brother) one Mahona Mabeseli. He submitted that, one day while at shamba digging, his sister-in-law brought him some food and she took his mobile phone. According to him, he wondered to

see that woman coming his way. At evening hours, he was arrested by three persons namely; Paskali, Mathias and Lemba and brought to the Village Chairperson. Later on, was sent to the nearest police station without first being taken to the justice of peace. He said, one day when the trial continued before the trial court, his advocate asked the trial magistrate to recall PW1 and PW2 but she refused on the ground that it was rain season. He faulted the prosecution evidence by stating that PW1 and PW2 were close relatives. In that view, he contended that the prosecution case was not proved beyond reasonable doubt. He concluded by praying the court to consider his grounds of appeal and set him free as he believed that this court is a temple of justice and that will do justice in accordance with the law.

Having carefully considered oral submissions advanced by both parties, the grounds of appeal and the court records, the issue for consideration is whether this appeal has merits.

To answer this question, I will pay attention to the grounds of appeal, the rival arguments advanced by both sides and the evidences available in the court record. As hinted above, the appellant was arraigned before the District Court of Ulanga, at Mahenge charged with the offence of rape and finally convicted and sentence to serve life imprisonment. Thus, this is the first appeal. In the case of **William Ntumbi v. DPP**, Criminal Appeal No. 320 of 2019 (Unreported), the Court of Appeal of Tanzania held that:

> *"The duty of the prosecution to prove the case beyond reasonable doubt is universal.* ***In Woodmington v. DPP (1935) AC 462,*** *it was held inter-alia that, it is a duty of the prosecution to prove the case and the standard of proof is*

beyond reasonable doubt. This is a universal standard in criminal trials and the duty never shifts to the accused. The term beyond reasonable doubt is not statutorily defined but case laws have defined it. We are fortified in this view to refer to the case of ***Magendo Paul & Another v. Republic (1993) TLR 219*** *where the Court held that: "For a case to be taken to have been proved beyond reasonable doubt its evidence must be strong against the accused person as to leave a remote possibility in his favour which can easily be dismissed."*

At this juncture, I find it pertinent to start with the above excerpt because I believe that in the course of answering the grounds of appeal will guide me to reach to a fair and just decision at this first appellate stage. Commencing with the 1st ground of appeal, the appellant complained that the trial court proceedings were marred by procedural irregularities. On this ground, Ms. Malya submitted that the appellant was given his right to be heard and he was well informed of his right at all stages of his trial. On reviewing the court record, I entirely agree with the submission advanced by the learned State Attorney that the appellant did enjoy his rights in accordance with the law. Again, section 132 of the CPA (Supra) was fully complied with. The law provides that:

"Section 132 states that, every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information on as to the nature of the offence charged".

Since it is clear from the record that the above provision of the law was adhered to and that the charge was read over and explained to the appellant and well understood his charge, and during trial he was afforded with the right to fend for himself in accordance with the law as shown at page 23 of the typed proceedings, and upon his conviction he was provided with an opportunity to advance his mitigation as depicted by the court record at page 8, I am satisfied that this ground of appeal has no merit. Even the 2nd ground is devoid of merits. I have reason. As correctly submitted by Ms. Malya, the record is silent whether the alleged cautioned statement was tendered in court during trial or even applied in evidence.

As regards to the 3rd ground, the same is baseless because following an allegation that the victim was raped, in the circumstance it was imperative for the victim to be taken to the hospital for medical examination and treatment as well. PW2 told the trial court that after she had physically examined the victim, she found that the victim had some bruises and further that she sustained injuries on her private parts to the extent that she was obliged to cover such parts by using a cloth to stop bleeding. The appellant on his part, did not raise any concern or complain while at police station whether he sustained some injuries or otherwise. Again, this ground falls in the same trap.

In respect of 4th ground, directed his grievance to his sister-in-law, Joyce Masunga (PW2) that she regularly enticing him to make sexual intercourse but he refused something created hatred and love jealousy to PW2, in my view, this fact is an afterthought to the appellant. Again, whether the victim was coached by PW2 to testify against the appellant as a resultant of the present appeal, yet this allegation is thin. The fact that he was convicted in absence of an independent witness to corroborate

the evidence of PW1 and PW2, this assertion is baseless. As correctly submitted by the learned State Attorney, section 143 of the Evidence Act (Supra) does not require a particular number of witnesses to prove a fact of facts. The Court of Appeal of Tanzania in a number of cases has discussed and well elaborated. Good examples are the cases of **Gabriel Simon Mnyele v. Republic,** Criminal Appeal No. 437 of 2007 and **Godfrey Gabinus @ Ndimbo and Two Others v. Republic,** Criminal Appeal No. 273 (both unreported). The court can act even on the evidence of a single witness if that witness can be believed given all surrounding circumstances. In **Selemani Makumba v. Republic, [2006] TLR 379** the Court held that a sole and credible witness may establish a case beyond reasonable doubt if the court finds the witness to be cogent and credible and the case in point is the victim of sexual offence.

She submitted further that, section 127 (1) of the Evidence Act (Supra) is clear that; every person shall be competent to testify unless the court considers that he is incapable of understanding the questions put to him or of giving rational answers to those questions by reason of tender age, extreme old age, disease (whether of body or mind) or any other similar cause. Based on law, Ms. Malya underlined that the Republic believed that the prosecution witnesses gave evidence which were (are) worth of credit. She referred the court to the case of **Ngaru Joseph and Another v. The Republic,** Criminal Case No. 172 of 2019 (Unreported) at pages 14 - 15 to fortify her argument. On reviewing the evidence on this facet, I agree with the learned State Attorney that this ground is unmerited.

On the 5th ground, I tend to agree with the learned State Attorney that this ground is an afterthought because when the translator, Kulwa

Kamisho translates from Sukuma language to Swahili language the appellant was present in court. If at all he performed his work contrary to his invitation, the appellant was able and capable to inform the trial Magistrate. As rightly submitted by the State Attorney, the appellant kept quiet until when the instant appeal was called on for hearing by this court. In my considered opinion, the translator performed his work as per invitation. Again, this ground has no merit.

Concerning the 6th ground, the appellant complained that his right to defend was curtailed as his advocate was denied the right to cross examine both PW1 and PW2. This allegation is unfounded. Ms. Malya contended that the appellant was given his right as shown at pages 14 – 15 of the typed proceedings and had no legal representation. It is trite law that failure to cross examine her on this key aspect is clearly an acceptance of the truthfulness of the testimony. See the case of **Abdul Mohamed Nawanga @ Madodo v. Republic**, Criminal Appeal No. 257 of 2020 (Unreported). The same position was underscored in the case of **Martin Misara v. Republic**, Criminal Appeal No 128 of 2016 CAT at Mbeya (Unreported), where it was held:

> *"It is the law in this jurisdiction founded upon prudence that failure to cross examine on a vital point, ordinarily, implies the acceptance of the truth of the witness evidence, and any alarm to the contrary is taken as an afterthought if raised thereafter."*

Guided by the above precedents, it is clear that the appellant accepted what PW1 and PW2 testified before the trial court as he failed to cross-examine. It is on record the evidence advanced by the victim was corroborated by the evidence of PW2 as shown at page 14 and PW3, the

medical clinical officer and the medical report herein Exhibit P1. In this regard, it is my considered view that the evidence of the victim which was not disputed by the appellant, even if it cannot be corroborated by other evidence may ground conviction of the appellant. However, in the circumstance of this case, the evidence of the victim becomes more credible when the same is corroborated by the evidence of PW2 and PW3. In the end, this ground has no merit.

Lastly, the appellant in grounds 7 and 8, complained that the trial court erred in law when admitted unsworn evidence of the victim and PW2 which ended to have no evidential value. He further attacked the evidence adduced of the victim to the effect that her evidence was received and admitted in evidence without conducting *voire dire test.* Responding to the appellant's contention the learned State Attorney conceded that the victim (PW1) being a child of tender age in-terms of sections 127 (4) of the Evidence Act qualified to be called as a child whose apparent age is not more than fourteen years. She went on submitting that section 127 (2) provides that 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 any lies. According to the learned State Attorney the child performed her duty as shown at page 14 of the typed proceedings. She added that under section 4 (b) of the Oaths and Statutory Declaration Act [Cap. 34 of R. E. 2019] an oath shall be made by any person acting as interpreter of questions put to him and evidence given by a person being examined by or giving evidence before a court. She continued that, at page 14 of the typed proceedings the child did affirm and complied with the provision of section 198 (1) of the CPA (Supra). She underlined that to conduct a *voire dire test* as it was held in

the case of **Ngaru Joseph** (Supra), that is to contravene with section 127 (2) of the Evidence Act (Supra) which read:

> *"(2) 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 any lies****". (Underline is mine).*

Now, reverting to the original court record and at page 11 of the typed proceedings transpires as hereunder shown:

> *"PROSECUTION CASE START*
>
> *PW1:*
>
> *PP: The PW1 - The girl of ..... years old has no Kiswahili language, I have interpreter for her.*
>
> *Court: The prayer Granted.*
>
> *PW1: (Her name withheld), 7 years, residence at Mbenja Village, Pagani:*
>
> *She promised to speak the truth".*

As it is clearly shown in the above excerpt from the trial court record, it appears that the trial magistrate did not comply with the provision of the law under subsection (2) of section 127 of the Evidence Act and case law as well as it was aptly expounded in **Godfrey Wilson v. Republic,** Criminal Appeal No. 168 of 2018 (Unreported) where our Apex Court held inter-alia that:

"Section 127 (2) as amended imperatively requires a child of a tender age to give a promise of telling the truth and not telling lies before he / she testifies in court. This is a condition precedent before reception of the evidence of a child of a tender age."

As regards to the consequences of failure to comply with the above provisions of the law, the Court had the following to state:

"In the absence of promise by PW1, we think that her evidence was not properly admitted in terms of section 127 (2) of the Evidence Act as amended by Act No. 4 of 2016. Hence, the same has no evidential value. Since the crucial evidence of PW1 is invalid, there is no evidence remaining to be corroborated by the evidence of PW2, PW3 and PW4 in view of sustaining the conviction".

Similar position was underscored in the cases of **Ally Ngozi v. R,** Criminal Appeal No. 216 of 2018; **Marko Bernard v. R,** Criminal Appeal No. 329 of 2018 and **Masanja Masunga v. R,** Criminal Appeal No. 318 of 2018 (All unreported).

The Court of Appeal in **Godfrey's case** (Supra) further gave directives on how to comply with the provisions of section 127 (2) of the Evidence Act by providing simplified questions which the trial magistrate or judge can ask the witness of a tender age though not exhaustive but largely depending on the circumstances of each case as shown hereunder:

1. The age of the child.

2. The religion which the child professes and whether he/she understands the nature of oath.

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

In this appeal, the victim who testifies as PW1 whose age was stated to be 7 years old, she was not subjected to a *voire dire test* before reception of her testimony. The trial magistrate as exhibited by the court record at page 13 of the typed proceedings, did not adhere to the requirement of the law under section 127 (2) of the Evidence Act. In another development, the Court of Appeal of Tanzania in **Wambura Kiginga v. Republic,** Criminal Appeal No 301 of 2018, at page 15 of the typed judgement, underscored two conditions which the court of law must satisfied itself if there are non-compliance under section 127 (2) of the Evidence Act. The Court held that:

"Based on that understanding, we were satisfied that, it is not impossible to convict a culprit of a sexual offence, where section 127 (2) of the Evidence Act is not complied with, provided that some conditions must be observed to the letter. The conditions are; ***first,*** *that there must be clear assessment of the victim's credibility on record and;* ***second,*** *the court must record reasons that notwithstanding non-compliance with section 127 (2), a person of tender age still told the truth".*

From the foregoing observations, I would agree with the appellant's contention that the evidence adduced by the victim was improperly procured by the trial court and had no evidential value. In my considered view, it was also unsafe to be relied on to secure conviction of the appellant. The only remedy available in respect of this piece of evidence is to expunge it from the court record as I hereby do.

As I have hinted above, it is settled principle of law that in criminal cases, the standard of proof is beyond reasonable doubt. (See: **Said Hemed v. Republic, [1987] TLR 117).** In the instant appeal, the evidence of PW2 and PW3 alone, in my considered opinion cannot suffice to secure conviction of the appellant.

That said and done, and to the extent of my findings, I am satisfied that the prosecution side did not prove their case beyond all reasonable doubt. I find that this appeal has merits. I thus, allow the appeal, quash conviction and set aside the sentence meted on the appellant. The appellant, Musa Nkwabi is to be released forthwith from prison custody, unless held by a lawful cause.

It is so ordered.

DATED at MOROGORO this **8th** day of July, 2022.

M. J. Chaba

Judge

8/7/2022