IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

CRIMINAL APPEAL No. 117 OF 2022

WILLIAM MICHAEL CHAULA.....APPELLANT

VS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of last order 27th February 2023

Date of judgment 31st March 2023

BADE , J.

This appeal is a result of a typical pursuing of a girl and never wanting to heed when the pursued says No. Worse still, the pursued was a minor, with the pursuer led by the desire to overpower the victim, believing the victim will be persuaded or would not report it.

The Appellant herein filed this appeal after being aggrieved with the decision of the Resident Magistrate Court of Manyara in Criminal Case number 67 of 2021. The Appellant raised 7 grounds of appeal:

i. That, the learned trial Magistrate erred in law and did not prove his guilty (sic) beyond all reasonable doubt.
ii. That, the trial Magistrate erred in law and facts by relying upon the uncorroborated evidence of PW1, PW2, PW3 and PW4 which contradicted each other and they ought not to have been believed.

iii. That, the trial Magistrate erred in law and facts on the judgment according to the testimony of PW2, testified show that, (sic) on the 04/08/2022 she met the accused who was riding a motorcycle that, their evidence ought to have been accorded less weight.

iv. That, the learned magistrate erred in law seriously and fact without considering the Appellant defense at the trial.

v. That, the trial court erred in relying on the evidence of closely related witnesses (PW1 and PW2) that, their evidence ought to have been accorded less weight.

vi. That, the trial court erred in law and facts by admitting and working upon the evidence of PW1 and PW2 without considering the sketch map to show where the two persons did meet and had sexual intercourse as proof by the prosecution side.

vii. That, the trial Magistrate erred in law and in facts by admitting PF3 which show that PW2 had sexual intercourse whereas on the proceeding the victim does not explain well how the witness did prove the accused to have committed the offence due to the circumstantial evidence tendered.

The short background of this appeal is that, the Appellant was charged before the Resident Magistrate Court of Manyara sitting at Babati with the offence of rape contrary to section 130(1)(2)(e) and 131(1) of the Penal Code [Cap 16 RE 2019], where he was alleged to have unlawfully engaged in sexual intercourse with a girl of 17 years old. Upon the hearing of the case to full trial, the accused was convicted and sentenced to serve 30 years in prison. He was also ordered to pay the victim TZS 500,000 as compensation.

The factual account of matter is that, on the 4th August 2021 at around 16:00 hours, the victim was on her way back home, she was riding a bicycle and incidentally she met one William Michael Chaula (the Appellant herein) who was riding a motorcycle. The Appellant requested the victim's company so that they could visit a building which had no inhabitants, to visit the people who were injured and dumped there. Upon their arrival at the said building the Appellant reminded the victim that he once proposed that she becomes his lover, the Appellant then turned her down and the accused caught her arm, ripped her skirt and the tights she was wearing as an undergarment, then shut her mouth and undressed his trouser as he started to carnally know the victim without her consent. Having finished raping her, he told her to go home where the victim narrated the whole story to her mom.

The Mother of the victim named Maria Basil, had testified that to have found her daughter pushing her bicycle while crying at around 1900 hrs where she informed her that she was raped by one William Chaula. She inspected her daughter's vagina and found that she was bleeding. The mother took it upon herself to report the matter to the Village Executive Officer who advised her to report the matter to the Police, Minjingu Police Station. On the same day the 4th August 2021 they attended the Medical Health Centre before one Deodatus Fadhili a Clinical Officer at Vilima vitatu Health Centre at 0800hrs. The Medical Officer testified to have received the patient who had a PF3, whom he examined and found her vagina with sperms, small bruises and discharging blood.

Parties had argued this appeal orally, with the Appellant reading his notes with leave of the Court, while Senior State Attorney Akisa Mhando represented the Respondent.

The Appellant had the right of commencement and he thus submit with regards to the 1st ground of appeal, that the court erred in law and fact since the offence was not proved beyond reasonable doubt against the Appellant. It is his further submission that the charge sheet shows that the victim of sexual offence was 17. But the testimony of Pw1 stated that PW2 was born on 23/11/2004 and that she was 16 years and 11 months old. The said victim while giving evidence stated that she was 16 and 11, months old, the observed variance on age is serious as it was held in **Ismail Ramadhani Mwembayo vs R, 1998 TLR 491** that the age of Victim of sexual offence has to be proven before it could convict an offender/ accused.

The Appellant also submits that, fact number 3 in the PH provides that the victim and the Accused were both riding a bicycle while the Appellant was not riding a bicycle but was riding a motorcycle this is shown at page 19 of the typed proceedings. An accused while charged was named as William Michael Chacha while the records of appeal show that his name is William Michael Chaula, this difference indicates clearly that these are two different people, as was held in **Richard Otieno Gulo vs R, Criminal Appeal no 367 of 2018** that proving a case beyond reasonable doubt is the duty of the prosecutor.

He also contends that the facts of the case and the testimony are contradictory. In **Nathaniel Mapunda vs R 2006 TLR 395** when evidence

is contradictory, it cannot be said that the republic had proved the case against the Appellant beyond reasonable doubt.

The Appellant also argued that, previously the case was heard before Honourable Kobelo SRM and the two witnesses PW1 and PW2 were already heard, the case file was then reassigned to Honourable Mushumbusi who did not even recall the said witnesses and hear them, this is against the law as stated in **Issa Sufiani Maluwa vs R, 2017 TLS LR 366.**

The second and third grounds of appeal were argued jointly, and he maintained that Court erred in law and fact for relying on contradictory evidence between PW1, PW2, PW3, and PW4 – where they contradict each other and thus the court should not have found credence in their testimony. He explained that PW1 who is the mother of victim of sexual offence stated that she found the victim bleeding without even describing the kind of bleeding, bearing in mind that the Victim of sexual offence was already experiencing her menstruation.

The Appellant also submitted that, PW1 the mother of the victim did not testify that she saw sperm on the victim's vagina. Meanwhile PW3 testified to have found sperms as the first thing he saw on the Victim of sexual offence. These two contradicted each other. The medical officer should have explained the condition of the vagina of the victim of sexual offence as to whether she was a virgin or not. In his view, he submitted that PW1 and PW3 testimony was not enough to prove that the victim was in fact raped, and he maintains that these are the same circumstances as in the case of **Christopher Albinus vs Republic, Criminal Appeal no 395 of 2015.**

He referred to page 9 of the typed proceedings which show that PW1 also explained that Victim of sexual offence's underwear and skirt were ripped, but this ripped garment was not brought to the court as an exhibit to prove this fact as it was held in **Majaliwa Ihemo vs R Criminal Appeal no 197 of 2020.**

The Appellant also argued that, the typed proceedings at page 14 show that the Village Executive Officer (VEO) to whom the incident was reported was the one who advised PW1 to report the matter to the police. The said VEO was not summoned in court as a witness, which raises doubt on the evidence of PW1 with regards to the evidence given among the relatives as it was held in **Hemedi said vs Mohamed Mbilu 1986 TLR 15.**

He further argued that PW4 explained in testimony that there was a cautioned statement but the same was not tendered in evidence. The investigator did not do anything with the case investigation, and had nothing to explain as to why the Appellant was made to be remanded from 05/08/2021 to 16/08/2021 when the appellant was taken to Court. The Appellant charged that the fact that he had to be remanded for 11 days without being taken to court was against his human right as the Constitution requires that a person is presumed innocent until proven guilty. This was also held in **Mashimba Dotto Lukubanija vs R, 2016 TLS LR 388.**

The Appellant argued further with regard to the 4th ground of appeal, that the court erred in law and fact when it did not consider the Appellant's defense. The judgment of the trial magistrate was supposed to analyze both sides testimonies, and should have given reasons for denying or allowing

each party's testimony. There were no reasons as to why the defense testimony was not considered, as the court held in **TBL vs Anthony Nyingi,** 2016 TLR 99 that reasons for accepting or denying evidence must be given. The trial magistrate at page 9 of the typed proceedings, brought in consideration of new issues which were not at issue as also held in Richard Otieno Gulo (supra).

Regarding ground 6, the Appellant also argued that the court erred in law and fact to admit testimony of PW1 and PW2 without a map which describes the scene of the crime where the Appellant and PW2 were actually having sex. He maintains that it is a legal requirement that the prosecution should prove their case beyond reasonable doubt, with the aim of making the court get the picture of the incident against the testimony as stated in court. And he concludes that the Court missed the advantage of this important evidence.

The Appellant argued with regard to the 7th ground of appeal that, trial court erred in fact for receiving and relying on PF3 which shows that the Victim of sexual offence had sexual intercourse, without it stating how was the victim raped, and that it is the Appellant who raped her. The trial magistrate was inclined to find the Appellant guilty without applying its mind that the PF3 was being tendered as evidence since it was found there were two exhibits marked as P1, the PF3 of Victim of sexual offence and birth certificate of the PW2. He argued further that the said PF3 was not enough to prove that the Victim of sexual offence was raped, other than showing that she had sexual intercourse, further it doesn't show that it is the Appellant who had raped the Victim of sexual offence. PW3 who prepared the PF3 should have also

requested for DNA to prove any doubt that might have arisen. He refers the Court to the **Albinus** case (supra).

In reply submission, **Ms Akisa Mhando** the learned Senior State Attorney charged back with regard to the 1st ground of appeal, that Respondent denies the appeal and made it clear that they do not support it. She submitted that the case was proved beyond reasonable doubt, since there was proof of the age of the Victim of sexual offence by PW1 at page 6 of the typed proceedings, who stated that the victim of sexual offence was 16 and 11 months old, and tendered her birth certificate, which was admitted in evidence as Exh. P1. Also the victim herself on page 8 of the typed proceedings stated that she is 16 years old. The learned Senior State Attorney also submitted that Even if the charge sheet stated the Victim of the sexual offence was 17 and the testimony shows that she was 16, the offence is still committed against an underage 18-year-old, and therefore it is statutory rape as per section 130 (2) (e) of the Penal Code. So the charge sheet and the testimony discrepancy still leave the offence of statutory rape, whose proof requires proving 3 ingredients, and she firmly maintained that they were all proved.

The learned Counsel charged further while replying to the 2nd ground of appeal, PW1 and PW2 were before the Court and the Appellant heard them testifying, but he never took it upon himself to cross examine the Victim of sexual offence or PW1 about the issue of age, which implies he conceded to the testimony given in court. She reasoned that his stance at this point is an afterthought. She refererred the Court to the case of **Samson Kejo vs R, Criminal Appeal no 302 2018 CAT at Arusha P9** where it was held that

when a party fails to cross-examine a witness, it means what the person said is true, and thus is estopped from denying the said fact.

She further maintained that, penetration is the second element of proving the offence of rape as per section 130(4)(a) which says penetration however slight amounts to rape. PW2 at page 9 of the proceedings, testified and clearly explained how the Appellant penetrated the penis into the victim's sexual parts. Also see page 10, the Victim of sexual offence maintained that it is the Appellant who penetrated her. PW2's testimony deserves credence and she was not in any way discredited. In many cases the position is that Victim of sexual offence evidence is the best evidence as stated in **Jacob Mayani vs Republic,** Criminal Appeal no 558 of 2016 CAT where it was held that Victim of sexual offence evidence is the best evidence.

She maintains further that in cases of rape incidences, we do not need corroborative evidence - Mayani's case (supra), if the court will believe the victim that she is telling the truth. But then PW2's testimony has been corroborated by PW3 who is a medical doctor at page 14 of the proceedings, where he stated the condition of the PW2's vagina after the medical exam, explaining that they found semen in it, bruises, and discharge that had blood in it. He tendered the PF3 which was tendered in court as exhibit PH1/P1. She explained the mix up of the exhibits is only a typing error, but the Appellant was able to distinguish between the two, and the Appellant never raised any objection or cross examined on the same. The only objection that he raised was that the PF3 report was not done on his presence.

The learned state Attorney argued that the testimony about the finding that there was a blood on the victim of sexual offence vagina, PW3 corroborated the PW2 evidence who explained how the incident happened, despite the PW3's testimony that he found bruises, sperms and blood. So these testimonies she maintains, do not contradict each other.

It is her further submission that, if the Appellant wanted to know which kind of blood was found on the Victim of sexual offence, he should have cross-examined PW1 and PW2 in their testimony, something he did not do, hence making it an afterthought as he conceded to the evidence given in court. She firmly contends that the prosecution managed to prove penetration beyond reasonable doubt.

On her further submission on the issue of identifying the accused person, PW2 on Page 8 testified on when exactly the incident happened, and so there was enough light, and that they had a conversation, and then they went together to check out the victims who were alleged to have had an accident. This shows that there was enough time for her to observe the accused, such that by the time she gets to court and testified, there was no issue of mistaken identity.

At P9 of the proceedings, PW2 insists that she knows the Appellant well because the Appellant is a motorbike rider and that the Appellant also never denies knowing PW2. He even admitted that they might have met at the Vilima vitatu area. Also immediately after the incident she was able to narrate with specific identity of who did this barbaric act to PW1 without any hesitation, that she was raped by William Chaula. The learned Counsel thus

reasoned that the mentioning of the Appellant immediately after the incident proved that there was rape and that it is the Appellant that raped the victim. She referred the Court once again to **Mayani's** case (supra) where it was stated that the act of mentioning the Appellant is an assurance that the doer is the person that is standing charges.

The Counsel replied further with regards to the 2nd ground of appeal that, she concedes that there might be some contradictions in the testimony, but she was quick to qualify that the said contradictions cannot be said to go to the root of the charges laid against the Appellant, and thus they did not flop the prosecution's case, referring to the case of Samson Kejo (supra), where it was insisted that inconsistencies that will affect the prosecution's case are those going to the root of the charges and the case against the accused. Many of the inconsistencies could have been cleared by cross-examining the witnesses, but the Appellant let it pass.

Issues of forced penetration were what PW3 testified upon, not that her private part had been expanded or not, and he could have cross-examined PW3 about it, which he never did. Also about the ripped garments, he could have asked the investigator or the Victim of sexual offence on the whereabouts of the ripped garments, which he did not do; so this is an afterthought. The important aspect that needed proof was whether it was the Appellant who penetrated the Victim of sexual offence, and not whether the garments were going to be brought to court. She firmly maintained that this was indeed proven with no doubt.

In reply to the 3rd ground of appeal, Ms. Mhando argued that at the Preliminary Hearing, it was mentioned that through PW1 and PW2 evidence they were both riding motorbikes, while PW2 during Preliminary Hearing it was shown that she was riding a motorcycle, these are attributed to typing errors. About the names mixed up on the charge sheet and the read facts between William Michael Chaula and William Michael Chacha, these are typing errors and we believe the handwritten notes will reveal the said typing error. Even in the memorandum of agreed matters, the Appellant admitted to his name, and he never disputed the said name, that it is William Michael Chaula, relating to the charge sheet. Also severally, PW1 and PW2 testimony shows that it is the same person standing charge.

Miss Mhando submitted further on the 4th ground of appeal that, they dispute the fact that the trial court did not consider the Appellant evidence. In the typed judgment at page 5, the honorable trial magistrate evaluated the Appellant's evidence, and at page 6 he evaluated the Appellant's testimony, that how or why he did not bring any witness from amongst his colleagues that he had alleged he was with; and that in his alibi defense he was at "Ziwani" with the other motorcycle riders. She further reasoned that the Appellant should have risen whatever doubts on the prosecution's case, and found that the defense had not risen any doubt, which he failed to do, and thus threw away his defense. So she firmly contends that the trial magistrate gave enough consideration to the Appellant's defense, and found that it had no bearing.

The learned Counsel for the Respondent took in the fact the trial magistrate made some observations in his judgment, which were not recorded at the proceedings (see the two last sentences at P7 of the typed judgment) that the accused has opted to stay silent, she responded in explanation that these were not mere observations, but rather, they were observations led from mitigation hearing, where when the Appellant was given a chance to mitigate, he had nothing to say.

The counsel submitted in support of the 5th ground of appeal that the Magistrate did not rely only on PW1 and PW2 testimonies to convict the Appellant. She firmly maintains that she realizes that to find an accused guilty on a relative's testimony, the same has to be corroborated by an independent person (see **Festo Mgimwa vs R,** Criminal Appeal no 378 of 2016 p12,) where it was stated that the relatives' testimony has to be corroborated. But PW1 and PW2's testimony was actually corroborated by PW3 who was the medical officer, who made a finding that an Appellant penetrated his penis into the victim's vagina and that he tendered PF3 as an exhibit. This was proved without any doubts.

In support of the 6th ground of appeal, the learned state attorney submitted that the prosecution never tendered any drawing of the incident (map) to which she conceded to, but was quick to contend that this omission does not exonerate the accused /Appellant that he did not commit the said offence. All the three ingredients of the offence of rape were actually proved beyond reasonable doubt, so that does not remove the liability from the Appellant.

With regard to ground 7 of the appeal, the learned state attorney submitted the details on how the incident happened, and the proceedings have it on page 9 on how the Appellant had her on the ground, ripped the tights she was wearing, and how he took his penis and inserted it into her vagina. The Victim of sexual offence was very explicit on how the incident happened to her. The fact that there was no DNA examination, which is not a requirement of the law, does not act to exonerate the accused in any way; and that is a wish and an afterthought.

In further reply to the additional grounds of appeal, that PW1 and PW2 were not recalled on the file being reassigned. The learned State Attorney submitted that, it does not appear on the record. And in any case, the same is cured under section 388 of the CPA. If the Appellant was prejudiced, the remedial procedure would be for the Court to order a retrial. She further contends that if the Appellant could hear PW3 and PW4 and then had his defense, it means that he was not prejudiced by this fact, since he was able to mount his defense, and since he was able to defend himself, then it was a fair trial, and that he was not denied of any right if this was not complied with.

On the fact that the VEO was not called to testify, section 143 of the TEA, states that it is not the number of witnesses but rather the weight accorded to the evidence on record that will prove the offence. Besides the Appellant had an opportunity to have the said evidence called to testify, but he did not do that. Also the fact that PW4 did not bring in evidence his cautioned statement, She contended that the prosecution did not have to bring in

evidence something that they did not wish to rely upon in its case, but more importantly, PW4 did not testify that the accused/ Appellant admitted the offence, as it is found at page 26 of the proceedings.

On the issue that he was brought in and made to be remanded for quite a number of days, The Respondent put it in response that the offence that the Appellant was charged with is bailable, and it is not found in the proceedings that he asked to be released on bail, and whether he was granted the same or not. This offence is bailable by the police, but there is not any evidence that he did ask for it or denied it or whatever, and notwithstanding that he has not been able to show how his rights were denied by the said denial of bail if he did ask for it.

In rejoinder submission the Appellant respondend, having being prompted by the Court why he did not take the bail, if the same was open to him, he responded that the police denied him bail since they said they were still investigating the offence.

About the issue of mitigation, he maintains that he did ask the court to let him free because he did not rape anybody, but all thus was not recorded.

He summed up his submission by praying the court to consider his grounds of appeal.

The issue for consideration before this court is whether this appeal is meritorious

Having heard the lengthy submission of both parties commensurate with the grounds of appeal, the issue for consideration before this court is whether this appeal is meritorious.

As I consider and deliberate on this matter, I wish to point out that all the raised grounds of appeal hinge on the fact that the Court relied on the evidence by the prosecution wrongly; thus I find it optimum that the 1st, 2nd and the 3rd grounds of appeal form a cluster of grounds with a similar complaint, which I shall determine jointly. The remaining grounds, that is ground no. 4,5,6 and 7 also are complaints about the evidence but I shall deal with them in seriatim since each of them allege a serious matter of evidence that touch the roots of the prosecution case.

The law that provides for the offence of rape is **section 130** of the penal code, Cap 16 [RE 2019], the provision under its subsections 1 and 4 provides as follows;

130 (1) It is an offence for a male person to rape a girl or woman

(4) For the purposes of proving the offence of rape

(a) Penetration however slight is sufficient to constitute the sexual intercourse necessary to the offence

(b) Evidence of resistance such as physical injuries to the body is not necessary to prove that sexual intercourse took place without consent

In line with the above provision, it goes without saying that proof in rape cases is guided by the above requirements. That the Prosecution is duty

bound to prove penetration however slight it is, but also, physical injuries to the body of the victim are not necessary.

The Appellant alleges that the case was not proved beyond reasonable doubt, and to justify his allegation he raised the other two grounds that, the *second* one that the trial Magistrate erred in law and facts by relying on the uncorroborated evidence of PW1, PW2, PW3 and PW4, which contradicted each other, while the *third* one is that the trial Magistrate erred in law and facts by relying on PW2 testimony.

For a rape case to be proved beyond reasonable doubt penetration is a key element that requires proof. However, for penetration to be proved all other prevailing circumstances need to be proved on how it went about the said penetration. The victim had identified an Appellant that he is the one who raped her, the evidence of PW3 had corroborated the evidence of PW1 and PW2, as he stated that the condition of the victim's vagina, that there was semen in the vagina, there were bruises and there was some discharge with blood in it. In the case of **Selemani Makumba vs R** [2006] T.L.R 379 the Court observed that in rape cases, true evidence has to be gathered from the victim. The complaint that the said testimony cannot be said to have not been corroborated while the Doctor who is PW3 examined the victim's vagina and observed the presence of bruises, semen and discharge mixed with blood.

The fact that the accused and the victim when they met both were riding a bicycle does not vitiate the averment that they actually met, since the Appellant's denial that he was not around at the scene of crime is not

substantiated by his defense of alibi, the only thing he denies is that he was not riding a bicycle but rather he was riding a motorcycle, that said the evidence does not refute his presence at the incident or his presence at the scene of the crime. He did not controvert this evidence, but cross-examining any of the witnesses that took the stand to testify against him, and I thus agree with the learned state Attorney that he is estopped from bringing an afterthought at an appeal stage. That said, the 1st, 2nd and 3rd grounds of appeal are meritless.

With regards to the 4th ground of appeal, that the accused's defense was not considered, I see it as lacking any base since it cannot be justified through records. For the Court to compose a judgment, it must hear both Parties. It is evidenced at several pages of the typed proceedings, that trial Magistrate considered both Parties evidence. At page 30 of the Trial court's typed proceedings it is clear that an accused now an Appellant was heard, since the bases of the judgment is the trial court's proceedings and it is evidenced that his defense was heard. The typed judgment is evident as the appellant's defense of alibi received enough consideration despite the Court observing that the accused did not notify the Court and the prosecution of his reliance on the defence of alibi as required by the law. At page 6 of the typed judgment, the trial magistrate restated the facts as provided by the accused and reasoned as to why he did not bring about any of the other Bodaboda riders to testify for him on his presence during the hours at the question. In any case, it defies logic that between the 16:00 hours to 23:00 hours, being a long space of time, the accused was not seen by any of the fellow

motorcycle riders who would be willing to come forth as a witness. this ground also lacks merit.

As for ground number 5, the Appellant complaint is that the relatives of the victim gave evidence hence their evidence was supposed to be accorded less weight. It is clear as provided by the law, the opponent party is given right to cross-examine the witness and shake their credibility as well as test their veracity, the law also provides that relative witnesses' evidence would need to be corroborated as it was stated in the case of **Festo Mgimwa vs R**, (Supra), I am inclined to agree with the learned state attorney that the relative's testimony be corroborated, and that it was corroborated since the evidence of PW1 and PW2 had been corroborated by the evidence of PW3.

In anycase, even if the Mother of the victim PW1 were not to testify, it will not change the position of the law that the victim of the sexual offence evidence is the best evidence, and that the said victim not only testified, but the accused did not cross-examine and controvert her evidence. Suffices it to say that PW2 was credible and coherent, and her testimony deserved credence by the Court. She firmly described the prelude to the incident, how the accused persuaded her to accompany him to the deserted house, and arrived at the scene, and how the accused took advantage of her while reminding her that he had asked her to become her lover. I am not convinced by this ground of appeal. As it was stated in the case of **Goodluck Kyando vs R** [2006] TLR363, every witness deserves to be trusted by the Court unless there are reasons to discredit her.

In my considered view, the credibility of the complainant/victim of the sexual offence is the single most important issue. If the testimony of the victim is credible, convincing, and consistent with human nature and the normal course of things, the accused may be convicted solely on the basis thereof, regardless of corroboration. This is important because it is undisputable that rape offences are difficult to prove because their very nature excludes other witnesses.

This Court is mindful and is aptly guided by three principles regarding matters of sexual offences and particularly rape, that to one, the accusation of rape can be made with facility and then they are difficult to prove, but even more difficult for the person accused though innocent to disprove; two, in view of the intrinsic nature of the crime of rape where only two persons are usually involved in the testimony of the complainant is the best testimony; even though the Court has to caution itself while relying on it, and three, the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defence.

The 6th and 7th grounds of appeal are complaints that there was no map of the scene of crime but also there was no DNA test to test as to whether the sperms found were the Appellant's sperms. As earlier on stated that section 130(**supra**) of the Penal code, for the prosecution to establish that there was rape committed they only had to prove penetration however slight, and also prove that the one who committed the said offence is actually the one

charged. These two facts were amply proved with no doubts left. Maps and DNA tests are not among the elements of the offence of rape.

In the upshot, this appeal is meritless. I hereby dismiss it.

DATED at **ARUSHA** on the 31st of March 2023

A. Z. BADE

JUDGE

31/03/2023

Judgment Delivered in chamber at **ARUSHA** this day **31st** day of **March 2023** in the presence of Accused, and absence of the State Attorney

A. Z. BADE

JUDGE

31/03/2023