IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRIFT REGISTRY OF ARUSHA)

AT ARUSHA

CRIMINAL APPEAL NO. 138 OF 2022

(Arising from the Criminal Case No. 43 of 2022 in the District Court of Babati at Babati)

THAWI SULE @ THAWI SULE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

31/05/2023 &14/7/2023

GWAE, J

In the District Court of Babati at Babati (trial court), the appellant, Thawi Sule @ Tlawi was charged, prosecuted and convicted of the offence of rape contrary to section 130 (1) (2) (e) and 131 (1) of the Penal Code Cap 16, R.E, 2019 (Code). Upon conviction, the trial court sentenced the appellant to the term of life imprisonment.

Initially, the prosecution alleged that, on that, 11th March 2022 at Gendi area, Singe Ward within Babati District in Manayara Region the appellant did have sexual intercourse with a girl of eight (8) years old known by her nick name Kasichana Elikana.

Before embarking into the appellant's grounds of appeal and their determination, perhaps is apposite to have a brief evidence adduced by both sides. It is the version of the prosecution side that, the appellant on the material date at daytime met the victim of the offence of rape, forcibly took her to his room, took off her underpants and then inserted his penis into the victim's vagina. However, after the appellant being sexually gratified, he ordered the victim (PW1) to wash her private parts and not to disclose the incidence to anybody. While at home, her mother (PW2) noticed anomaly from the victim to wit; difficulty in walkings. She inquired her as to what caused such anomaly. Eventually, the victim narrated the incidence to her mother as to what actually transpired on the material date. The matter was reported to police including to a teacher (PW3) where the victim was pursuing her primary studies. PF3 (PE1) was issued for medical examination.

On the other hand, the appellant entered his defence by merely asserting that he did not commit the offence to the victim (PW2) and when cross examined, he admitted familiarity between the victim and him and that, there was no grudges that, existed between the victim and him (appellant).

Demonstrating his grievances to this court as the 1st appellate court, the appellant has advanced five grounds of appeal however in essence there are four grounds of appeal namely;

1. That, the trial court erred in law and fact by convicting the appellant basing on the evidence of witnesses marred with contradictions
2. That, the trial court erred in law and fact for failure to comply with section 240 (3) of the Criminal Procedure Act, Cap 20 Revised Edition, 2019 (CPA) and section 127 (2) of the Evidence Act, Cap 6, Revised Edition, 2019 (TEA)
3. That, the trial court erred in law and fact for its failure to consider mitigating factors thereby failing to apply sentencing principle resulting into imposition of the sentence of life imprisonment
4. That, the trial court magistrate erred in law and fact by hurrying the justice thus occasioning unfair trial and injustice

On 5th day of May 2023 when this appeal was called for hearing, Mr. Ngeyan Oloibormunei Laiser, the learned advocate and Ms. Alice Mtenga, the learned state attorney appeared representing the appellant and respondent respectively. The hearing of this appeal was consensually conducted by way of written submission. However, it is plainly clear that, the appellant's counsel abandoned the 3rd ground of appeal by way of abstaining from arguing it.

Submitting on the 1st ground of appeal, the learned counsel for the appellant pin pointed two contradictions. **Firstly**, that, the PW2 testified with effect the appellant when turned back she was walking with no problem save in the night when she notice her difficulty walking and **secondly**, that there was contradictions of the evidence adduced by PW2 as to when the victim came back home. Was it at about 12:00 hrs or 13:00 hrs?. He also argued that, there was a need on the part of the prosecution to prove penetration by a doctor, which was according to him, not the case.

On the 3rd ground, the appellant's counsel argued that hurriedness by the trial court in closing the prosecution evidence, rendering its ruling, allowing the accused to make his defence and delivering judgment on the same date (26/7/2022). Thus, failure to accord fair hearing and causing the appellant not able to follow the proceedings and defend himself on the same date.

Regarding the 2nd ground, Mr. Laiser argued that, the appellant was not accorded an opportunity of either summoning the author of the PF3 or cross examining the medical doctor. Thus, in contravention of section 240 (3) of the CPA. He supported his submission by referring to judicial decisions in **Hamisi Malingira vs. Republic**, Criminal Appeal No.4 of

2014, **Rahim Mohamed vs. Republic**, Criminal Appeal No. 233 of 2003 and **Kashana Buyoka vs. Republic**, Criminal Appeal No. 176 of 2003 (all unreported). Due the alleged oversight, the appellant's counsel urged this court to expunge PF3 from the record.

Mr. Lasier also added that there was contravention of section 127 (2) of TEA as there was no questions that were asked and recorded by the trial court save the conclusion arrived at taking into account that, the victim's promise was not recorded in her own words. He embraced his submission by citing the decision of this court in **Hassan Samson vs. Republic,** Criminal Appeal No. 145 of 2019 (unreported) where it was stated that;

> *"I find it unsafe to rely on what it is stated by the trial magistrate as quoted above. Assume that, the process of making PW2, a child of tender age, promises to tell the truth, was adhered to as required by the law. The promise by the PW2 ought to have been recorded in her own words".*

Finally, Mr. Laiser urged this court be pleased to expunge the PF3 and discard the testimony of PW2 and eventually the court be pleased to quash and set aside the trial court judgment and sentence meted against the appellant.

Responding to the appellant's submission in respect of the 1st ground of appeal, the respondent's leaned counsel argued that, the appellant's complaint on the said contradictory evidence adduced by PW2 is baseless since the same is not backed by the trial court record. She added that changing school uniform and going out to play with her fellow children does not mean that the victim was comfortable. The respondent's counsel invited the court to refer to **Goodluck Kyando vs. Republic** (2006) TLR 363 where it stated that every witness is entitled to credence and must be believed unless there are good and cogent reasons for not believing a witness.

On the appellant complaint that, there was a need to prove the requisite penetration, the counsel for the Republic submitted that, the evidence as to penetration does not come only from medical practitioner but also from the victim. He referred the case of **Selemani Nakumba vs. Republic** (2006) TLR 379 where it was held that;

> *"The true evidence of rape has to come from the victim, if an adult that there was penetration and no consent and in case of any other women where the consent is irrelevant that there was penetration."*

Ms. Alice Mtenga also stated that the issue of difference of time of incident does not vitiate the proceedings provided that, the evidence in

totality establishes that the offence in question was committed. Basing on the above precedent and other judicial jurisprudence, the learned counsel, prayed for an order dismissing the 1st ground of appeal.

Resisting the 2nd ground of appeal, Ms. Mtenga argued that hearing both sides and rendering judgment on the same is not fatal in law since section 311 (1) of the CPA provides that, a decision shall be delivered immediately or as soon as possible after termination of trial but not exceeding 90 days. Relying on the said provision of the law, she also prayed this ground be dismissed.

In the complained non-compliance with section 240 (3) and 127 (2) of the TEA, the learned state attorney was of the opinion that, section 240 (3) of the Act does not coach to the mandatory requirement as it provides that, the trial court may summon the author if so requested by the accused or his advocate. She bolstered her argument with the decision in the case of **DPP vs. Shida Manyama**, Criminal Appeal No. 285 of 2012 (unreported) where the Court of Appeal of Tanzania stated that, an expert is not a witness of fact as such his evidence is really of advisory character. It is not within his province to act as a judge or assessor or jury and therefore the court may form its own judgment. She equally urged that section 127 (2) of the TEA was followed by the trial court as

required as the victim, PW1 conspicuously testified that she knew to speak the lies and that; she came to court to speak the truth. Reinforcing her argument in counter, she cited the case of **Issa Salu Nambaluka vs. the Republic**, Criminal Appeal No. 272 of 2018 (unreported) and **Godfrey Wilson vs. Republic**, Criminal Appeal No. 168 of 2018 (both unreported-CAT).

This is what momentarily transpired during trial of the criminal charge against the appellant and during appeal before the court. Now, it is the obligation of the court to determine the appellant's grounds of appeal as herein under.

In the **1st ground of appeal on the alleged contradictions of the prosecution evidence.** As plainly complained by the appellant it is true that PW2 did not notice the victim's difficulty walking when she saw her coming back or when changing her school uniform or when going out for child plays except at night as reflected by the PW2's testimony. In my view, this piece of evidence does not constitute any contradiction capable of vitiating the trial court finding since at the first time when PW2 saw her daughter she did not stay with her as the victim changed her clothes and went out of the house to play.

More so, the evidence of victim's mother is very clear that, she noticed the victim's unusual walking at night and it was when she made an inquiry as to what happened to her daughter. In my considered view, had PW2 intended to fabricate evidence against the appellant perhaps she would testify that, she saw the victim not well walking when she saw her coming back from school at 14:00 hrs. The same version was repeated when PW2 was cross-examined by the appellant as reflected at page 10 of the typed proceedings. That being the case I do not see any reason to disbelieve her testimony as was appropriately stressed in the case of **Goodluck Kyando** (Supra).

Moreover, on the alleged failure by the prosecution to prove the necessary penetration, it is however correct as argued by the appellant's counsel that, proof of penetration is an essential ingredient in rape cases. I am further in agreement with the learned counsel for the appellant who was of the view that not only a doctor who may prove penetration but also the state and conducts of the victim of rape. I would also add that, the penetration may be proved by the victim of the rape orally without even medical report (PF3). Acording to section 130 (4) (a) penetration however slight is, it is sufficient to constitute the sexual intercourse necessary to the offence of rape.

The Court of Appeal stressed the requirement of penetration by the offender's penis into the victim's vagina in **Mathayo Ngalya @ Shabani vs. Republic,** Criminal Appeal No. 170 of 2006, (unreported) by observing that:-

> *"The essence of the offence of rape is..... penetration of the male organ into the Vagina. Sub-section (a) of section 130 (4) of the Penal Code Cap. 16 as amended by the Sexual Offence (Special Provisions) Act 1998 provides:- for the purpose of proving the offence of rape, penetration, however slight is sufficient to constitute the sexual intercourse necessary for the offence. For the offence of rape it is of utmost importance to lead evidence of penetration and not simply to give a general statement alleging that rape was committed without elaborating what actually took place. It is the duty of the prosecution and the Court to ensure that the witness gives the relevant evidence which proves the offence."*

In our instant criminal matter, I have examined the evidence of the victim (PW1), in my increasingly view, has sufficiently indicated that the appellant's reproductive organ was inserted into the victim's vagina by stating that the appellant inserted his penis into the PW1's vagina. For clarity, I wish to reproduce parts of the victim's evidence in that aspect herein below;

"Alinivua chupa yangu nakunilaza kitandani. Naye akavua surali yake kaniingizia uume wake kwenye uke wangu. Huu uume uko hapa".

Carefully assessing the victim's evidence whose parts are quoted above it goes without saying that, there was penetration. Similarly, there is evidence indicating that, the appellant told the victim to wash her private parts, which is sufficiently establishing that the appellant, perpetrator had inserted his genital organ and he had already ejaculated. The assertion that, the victim did not disclose it to PW2 at the earliest opportunity is cured by her reasons of her abstinence from doing that is, she was threatened to be killed if she would divulge such illegal incidence.

As to the alleged contradiction of time of returning from school by the victim or occurrence of the incidence. I find the evidence adduced by PW2 in this regard is very clear and to the effect that, the victim used to come back school at 12:00 hrs however, on the material date she was late to come back home as a result PW2 went out looking for her. Nevertheless, she did not see the victim at neighbours' house nor did she see the appellant at that time until 14:00 hrs when PW2 saw the victim coming back home. Therefore, the issue as to the contradiction of time of coming back home does not arise. The appellant's complaint that, there was contradictory evidence adduced by PW2 on whether the victim turned

back at 12: 00 hrs or 13: 00 hrs is unfounded. The first ground of appeal is dismissed.

Coming to the **2nd ground of appeal which reads**; that, the trial court erred in law and fact for failure to comply with section 240 (3) of the CPA and 127 (2) of the TEA. In determining this ground of appeal, I would like to start with the 1st limb on the complained non-compliance with **section 240 (3)** of the CPA. It is imperative that a subordinate court when trying a case in its original jurisdiction and the High Court respectively has to comply with section 240 (3) and 276 of the CPA when an issue of tendering a PF3 or Post-mortem Report during trial is concern. This position was judiciously stressed in **Elias Mtati @ Ibichi Dawido Qumunga vs. Republic** (1993) TLR. 120 where the Court of Appeal observed;

> *'"Often times it is forgotten that just as is the case with section 240 (3) of the CPA, its kith, section 291 (3) of CPA, also carries with it the requirement under which the court is imperatively enjoined to inform the accused of his/her right to have the medical officer summoned for examination."*

In our present matter, section 240 (3) of the Act is applicable since the PF3 tendered and admitted as PE1 during trial before the subordinate court. Section 240 (3) of the Act provides;

"240 (3) Where a report referred to in this section is received in evidence the court may if it thinks fit, and shall, if so requested by the accused or his advocate, summon and examine or make available for cross-examination the person who made the report; and the court shall inform the accused of his right to require the person who made the report to be summoned in accordance with the provisions of this subsection."

The wording of the provision of the law reproduced herein clearly envisages that, the word "shall" used therein coaches to the mandatory requirement. Therefore, the trial court, in my considered view ought to have informed the accused person now appellant of his right to have the one who is said to have medically examined the victim and filled the PF3 (PE1) summoned. After the accused being informed of such right, he may wish to have the one who made the report summoned or not and his reply must be recorded. This position of the law has been consistently stressed by our courts. For example in the case of **Sprian Justine Tarimo vs. the Republic,** criminal appeal no. 226 of 2007 (unreported), where Court of Appeal approving its decisions in **Kashana Buyoka vs. Republic,** Criminal Appeal No. 176 of 2004 (unreported) and **Sultan s/o Mohamed vs. Republic,** Criminal Appeal No. 176 of 2003 (unreported) held;

"In the trial under scrutiny, omission to comply with section 240 (3) was not the only flaw. Another fatal flaw is that the contents of Exhibit P1 were not even read out to the appellant. So the appellant was convicted on the basis of evidence he was not made aware of although he was always in court throughout his trial."

The same position was highlighted in **Issa Hamis Likamalila vs. The Republic,** Criminal Appeal No. 48 of 2003 (unreported) where the Court of Appeal stated that: -

"Only when carnal knowledge is in dispute would medical evidence be required to prove whether rape has been committed on the victim."

Indeed, the Court went further and stated that: -

"When rape is not in dispute and section 240 (3) of the CPA has not been complied with causing medical evidence to be excluded, as is the case here, the court can determine the rape case on available evidence."

See also judicial jurisprudence in **Prosper Majoera Kisa vs. The Republic**, Criminal Appeal No. 73 of 2003, **Shaban Ally vs. The Republic,** Criminal Appeal No. 50 of 2001 and **Salu Sosoma vs. The Republic**, Criminal Appeal No. 31 of 2006 (all unreported).

Diligently examining the record of the trial court, I have observed the following irregularities;

1. The appellant was not informed of his statutory right to have the maker of the PE1 summoned pursuant to section 240 (3) of the CPA
2. That, Contents of PF3 was not read over by the one (PW4) who tendered it (See **Robinson Mwanjisi & 3 others v. Republic** (2003) TLR No. 218)
3. PW4, a police officer who investigated the case was asked to explain PE1 worse still she is not an expert and neither the one who filled it.
4. The trial court was not informed of the reason of failure by the prosecution to summon the medical practitioner, maker of PE1.

Basing on the above shortfalls or irregularities committed by the trial court, the PF3 received as PE1 by the trial court deserves the wrath of being expunged from the record. I thus expunge it as correctly sought by the appellant's counsel. Therefore, the appellant's 1st aspect in the 3rd ground of appeal is allowed.

Regarding the **2nd aspect in the appellant's complaint** in the 3rd ground on alleged failure to comply with section 127 (2) of the TEA. I am alive that before an amendment of section 127 (2) of TEA by a deletion of subsection (2) and (3) and substitution of subsection (2) of the TEA via Written Laws (Miscellaneous Amendments) Act No. 4 f 2016, there was a requirement of conducting **a voire dire test** before the evidence a

witness of a tender age is received. The essence being to ascertain on whether the child of tender age understood the nature of oath and the obligation of telling the truth and if he or she possessed sufficient intelligence to justify reception of his or her evidence.

However, after the said amendment of section 127 (2) and (3) of TEA, the child of tender is now required to promise to tell the truth and not lies before his or her testimony is received. Section 127 (2) reads;

> *"(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.*
> *(3) Notwithstanding any rule of law or practice to the contrary, but subject to the provisions of subsection (6), the evidence of a child of tender age received under subsection (2) may be acted upon by the court as material evidence corroborating the evidence of another child of tender age previously* given or the evidence given by an adult which is required by law or practice to be corroborated."

Endeavoring to interpret the subsection (2) of section 127 of the Act, the Court of Appeal in **Issa Salum Mwamaluka vs. Republic**, Criminal Appeal No. 272 of 2018 (unreported) at Mtwara when dealing with similar situation, the testimony of the victim (PW1) who was of tender

age (14 years old) when she appeared before the trial court. The Court of Appeal in its decision delivered on 21st February 2020 had these to say;

> *"In the case at hand, PW1 gave her evidence on affirmation. The record does not reflect that she understood the nature of oath. As stated above under current position of the law, if the child witness does not understand the nature of oath, she or he can still give evidence without taking oath or making an affirmation but must promise to tell the truth and not to tell lies."*

The above interpretation was correctly emphasized in the case of **Mathayo Laurence Mollel vs. Republic**, Criminal Appeal of 2020 (unreported) whose judgment was delivered on 20th February 2023 by the Court of Appeal sitting in Arusha and it was held and I quote;

> *"They simply promised to tell only the truth. We think this was quite appropriate in terms of sub-section (2) of section 127 of the Evidence Act reproduced above. We are unable to agree with the appellant that the trial court ought to have conducted a test to verify whether the child witnesses knew and understood the meaning of oath or affirmation. In our considered view, that requirement would only be necessary if the child witnesses testified on oath or affirmation."*

Another judicial interpretation of section 127 (2) of the Act was in the case of **Geofrey Wilson vs. Republic,** Criminal Appeal No. 168 of 2018 (unreported) whose decision was rendered on 7th day of May 2019, the Court of Appeal authoritatively held that;

> *"To our understanding the above cited provision as amended, provides for conditions.* ***One,*** *it allows the child of a tender age to give evidence without oath or affirmation,* ***two,*** *before giving evidence such child is mandatorily required to promise to tell the truth to the court and not to tell lies.....The magistrate ought to have required PW1 to promise whether or not she would tell the truth and not lies.....We think the magistrate or judge may 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 the nature of oath*
> 3. *Whether or the child promises to tell the truth and not to tell lies."*

In the instant case, the appellant through his learned advocate is found complaining that, the trial magistrate did not indicate questions asked. Therefore, no promise that was made by PW1. The record reveals that, the prosecutor initially notified the trial court of the age of his witness

he had on that date ("the victim is a girl of 8 years"). Furthermore, before taking the testimony of PW1, the learned Resident Magistrate did record as follows;

> "*Kasichana Elikana, Pupil of Gendi Primary School at Std II, 8 years, Christian*
> ***Court:*** *After examine (sic) the victim by asking her some important questions, she had this to say; I know to speak lies is sin. I come here in court to speak the truth only."*

Considering the fact that the victim, PW1 promised to tell the truth only and not lies as stressed in the case of **Issa** (supra) and taking into account that, though not made in form of simplified questions but the trial magistrate asked the victim about her age and her religious when taking he particulars. In addition to that, the learned trial magistrate is found to have asked some questions as he stated after had asked some pertinent question. Hence, compliance with the direction by the Court of Appeal in **Geofrey's** case (supra) ("the magistrate or judge may ask the witness questions").

Nonetheless, in the decisions in **Issa Salum Mwamaluka and Gefrey Wilson** (supra), the Court of Appeal of Tanzania, respectively, held that, the affirmed testimony was taken without any record revealing that, the victim, PW1 understood the nature of affirmation and without

promising to tell the truth and not lies. Thus, the case at hand is distinguishable with the former authorities cited above that led to allowing of both appeals unlike in **Mathayo Laurence Mollel** (supra) where the appellant's appeal was dismissed based on the legal aspect as raised in the appeal at hand by the appellant. Consequently, the 2nd aspect in the 3rd ground of appeal is dismissed.

Lastly, **on the 4th ground of appeal on the alleged speed of trial.** It is always the public complaints against the judiciary, investigation and prosecution that, there are grave delays in criminal trials. Thus, a need to ensure that cases are timely heard and determined by our courts. In our jurisdiction, many of criminal cases relating to sexual offences end up with acquittals or discharge under section 225 (5) of the CPA merely because the investigations and trials are delayed. Strangely, in this case the appellant is found seriously complaining that, he was prejudiced for the speedy trial that was conducted by the trial court. Hence, the speedy hearing and disposal of the cases on the same date. Astonishingly, in the instant appeal one of the grounds of the appellant's appeal is expeditious hearing and determination of the case.

I am aware of the established principle that, "*justice delayed is justice denied*" as well as the legal maxim that, "*justice hurried is justice*

buried". Nevertheless, I am not aware of any provision of the law, which prohibits trial of a criminal charge to be concluded in a day followed by pronouncement of judgment on the same date. Yet, I am not unsound of the principle of fair hearing in any judicial proceedings as was rightly stressed in **Mbeya Rukwa Auto Part & Transport Limited v. Jestica George Mwakyma,** Civil Appeal No. 45 of 2000 (unreported-CAT) where the Court of Appeal of Tanzania held that, a fair hearing is among the attributes of equality before the law.

Having traversed the trial court record it is vividly clear that, the trial before the trial court commenced on 5th May 2022 when the evidence of the three witnesses for the Prosecution was recorded. It is also clear that, on 26th day of July 2022 is when the last prosecution witness (PW4) vividly testified and it was when the defence evidence was also taken and closed. Similarly, on the same date the impugned judgment was delivered. Therefore, it is not true that, the trial commenced on the date when judgment was delivered.

Nevertheless, it is not fatal to commence the trial, conclude the same on the same date and further proceed preparing ruling or judgment and pronounce it on the same date unless an accused person has sought an adjournment to enable him or her to adequately prepare for defence.

The provision of the law applicable in delivery of the judgment is section 311 (1) of the CPA which reads and I quote;

> *"311 (1) The decision of every trial of any criminal case or matter shall be delivered in an open court immediately or as soon as possible after termination of trial, but in any case not exceeding ninety days, of which notice shall be given to the parties or their advocates, if any, but where the decision is in writing at the time of pronouncement, the Judge or Magistrate may, unless objection to that course is taken by either the prosecution or the defence, explain the substance of the decision in an open court in lieu of reading such decision in full".*

According to the wording of the statutory provision quoted above, it is plainly clear in my firm view that, a trial judge or magistrate may compose and deliver a judgment or ruling immediately after conclusion of the trial of a criminal case. However, such pronouncement of a decision should not be delivered after lapse of ninety days from the date of last hearing or last order unless there is valid reason for not doing so. I am saying, last order as the parties in proceedings after termination of trial may prefer to the filing of written closing submission. Basing on the above provision of the law, the appellant's 4th complaint is also baseless.

Having expunged the PF3 as herein above, it is now the duty of the court to ascertain if the prosecution evidence is credible and worth for sustaining the trial court's conviction and sentence meted against the appellant. Subsection (6) of section 127 of the CPA which provides that, a judge or magistrate may convict an accused person without corroborative evidence adduced by a victim of the sexual offence or a witness of tender age if he or she satisfies the court that he or she is telling or told the court nothing but the truth.

In our instant case as earlier alluded above, I have found no reason to disbelief the evidence adduced by the victim and her mother (PW2). The evidence of WP1 is sufficient pertaining with no reason to doubt its credibility. More so, I further taken into account that, the appellant in his own accord when cross-examined told the trial court that, he had no conflict with the victim or PW2, his neighbours who were certainly familiar to each.

I have further asked myself if there was no conflict/misunderstanding between the appellant and the victim and or her mother what made the victim to incriminatorily testify against the appellant, for what motive? I am alive of the principle that even in the absence of the PF3 yet an accused person may be convicted of a sexual offence even where the

prosecution evidence is dependent on the victim's testimony and or that of independent witnesses. I would like to subscribe my finding to **Gingi Pius vs. Republic**, Criminal Appeal No.264 of 2008 (unreported), Court of Appeal sitting at Tabora). In this case, I am of the considered view that, the evidence adduced by the victim, PW1 was straight forward and the same is nothing but the truth with effect that, the appellant had have carnal knowledge with a girl under ten years old.

In the final analysis therefore, this appeal fails and I hereby dismiss it save the 1st aspect in the 2nd ground of appeal relating non-compliance with section 240 (3) of the CPA. Therefore, the trial court's conviction and sentence meted against the appellant are hereby upheld.

Order accordingly

DATED at **ARUSHA** this **14th July 2023**

MOHAMED R. GWAE
JUDGE

Court: Right to appeal to the Court of Appeal fully explained

HIGH COURT OF TANZANIA

MOHAMED R. GWAE
JUDGE
14/07/2023