

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA SUB- REGISTRY
AT ARUSHA**

CRIMINAL APPEAL NO. 149 OF 2022

(Originating from Criminal Case No 26 of 2022 before the District Court of Babati at Babati)

PIUS JOHN 1ST APPELLANT
ALEX OMARY 2ND APPELLANT
DISMAS BENJAMINI 3RD APPELLANT
KENEDY DANIEL 4TH APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

27th April & 24th May 2023

KAMUZORA, J.

The Appellants herein, are challenging the conviction and sentence of 30 years imprisonment imposed by the District Court of Babati at Babati (the trial court) for the offence of armed robbery. Ten grounds were preferred by the Appellants in their petition of appeal as follows: -

1) That, the trial Magistrate erred in law and fact for holding that the prosecution side proved its case against all accused beyond reasonable doubts.

- 2) *That, the trial magistrate erred in law and in fact in holding that armed robbery occurred at Hamiri Estate Ltd on 13th day of February 2022.*
- 3) *That, the trial magistrate erred in law and in fact in holding that the Appellants herein were correctly identified while there was no identification parade conducted.*
- 4) *That, the trial magistrate erred in law and in fact in holding that the prosecution had proper information while they arrested 21 persons and released 17 without being charged with an offence of armed robbery.*
- 5) *That, the trial magistrate erred in law and in fact in holding that the Appellants herein committed the offence while no evidence that they were neighbours to the land where the offence of committed.*
- 6) *That, the trial magistrate erred in law and in fact in considering the prosecution evidence that was not given under oath.*
- 7) *That, the trial magistrate erred in law and in fact for admitting and considering the statement given by witnesses who could not be found contrary to the requirement of the law.*
- 8) *That, the trial magistrate erred in law and in fact in considering that prosecution witness disappeared after being threatened to be killed.*
- 9) *That, the trial magistrate erred in law and in fact in failing to determine the issue of ownership of the land in which the said stolen goats were found.*

10) That, the trial magistrate erred in law and in fact in holding that the defence of alibi was not properly raised and proved by the Appellants herein.

Briefly, the Appellants were charged for the offence of armed robbery contrary to section 287A of the Penal Code, Cap 16 (R.E 2019). It was alleged that, on 13th February, 2022 at Kirudiki area within Babati District in Manyara Region, the Appellants did steal forty-one goats the property of Hamiri Estate Company Limited and immediately before such stealing did threaten to assault by using sticks and Machete the Shepherd named Paulo Bura in order to obtain the said goats.

The trial court was satisfied that the prosecution evidence was water tight hence proceeded to convict the Appellants and sentenced them to thirty years imprisonment. Being aggrieved, the Appellants preferred the present appeal faulting the decision of the trial court. When the matter was called for hearing, the Appellants were ably represented by Mr. Amani Mkwama, learned advocate, whereas Ms. Riziki Mahanyu, learned State Attorney appeared for the Republic.

In his oral submission in support of appeal the counsel for the Appellants argued jointly the second, fifth and the ninth grounds of appeal that, although the Appellants were mentioned to be among the

people responsible for stealing 41 goats and threatening to the person grazing the goats one Paulo Bura there is no evidence to support that allegation. That, the evidence by PW1, Hamis Almas ASP Emmanuel Kandola does not indicate the person responsible for the attack. That, the inventory form for 10 goats, exhibit PE1 was prepared on 24/02/2022 while the incident allegedly occurred on 13/02/2022. It is the claim by the counsel for the Appellants that, the evidence by the prosecution side did not prove that the offence of armed robbery was committed. That, no witness who proved that any of the Appellant was holding a weapon at the time of committing the offence. That, the evidence was too general showing that a group of people carrying weapons invaded the person who was grazing the goats. That, no witness mentioned the kind weapons the Appellants were carrying.

The counsel for the Appellant further submitted that, what was alleged as stolen was 41 goats but, only 10 carcasses were sent to court for disposal and an inventory was issued. That, it seems that 28 goats out of 41 seems were sent back to the owner on the same they were alleged stolen but, the evidence does not reveal as to who returned the goats and who received the same. That, no independent witness who witnessed the handing over of the said goats. That, neither of the

Appellants was arrested in possession of the goats as the evidence reveals the goats were found in the farm but the owner of the farm was not mentioned.

The appellants' counsel added that the trial magistrate in considering that the Appellants were bordered with the investor's farm, believed that they were responsible for the offence. That, as per evidence of Surenjar, the Director of Hamir estate, the farm is 613 acres thus, there are other more neighbours. That, there was no proof beyond reasonable doubt that, it was the Appellants who committed the alleged offence.

Arguing jointly for the third and fourth grounds, the counsel for the Appellant submitted that, ASP Emanuel Kandola claimed to arrest them on 15/02/2022 without mentioning the time. That, Kandola never knew the Appellant before the date of incident and did not mention the person who directed him to the Appellants as being responsible for the offence. He contended that the Appellants were arrested based on the statement of Paulo Bura who claimed to know the Appellants by their names. That, apart from Paulo Bura, another person who was at the scene was PW2 Salim Issa who claimed that he saw the people who were holding Paulo Bura. That, in his evidence PW2 did not mention the

Appellants rather mentioned Hamis Hussein, Patro Charles, Yona Israel and Philemon Jonas as the people he saw at the scene. That, none of them were either arrested or charged.

The Appellant's counsel also submitted that the Appellants were arrested on 15/02/2022 but were sent to court on 21/02/2022 without explanation as to why they were under custody for a long time. That, there is also no explanation as to why among 21 people who were arrested 17 were released and only 4 were charged. To him, that conduct connotes ill motive against the Appellants.

Arguing for the sixth ground, the counsel for the Appellant submitted that, it is a legal requirement under section 198(1) of the Criminal Procedure Act, Cap 20 R.E. 2019 (the CPA) that a witness must be sworn to testify in court but, PW3 Surrender testified without oath/affirmation. Pointing at the Oath and Statutory Declaration Act, Cap 34 R.E. 2019, he submitted that under section 4 of the Act a witness must take oath or affirm before testifying in court. That since that was not done, he argued that the evidence of PW3 was nullity.

The counsel for the Appellant submitted jointly for the seventh and eighth grounds that, the prosecution reason for tendering the statement of Paulo Bura and Ezekiel Samweli was weak. That, their reason was

that those witnesses could not be found but, they did not state the effort made to trace those important witnesses. That, the claim that the Paulo Bura was not employee in the estate contradicts the evidence of PW1. That, the statement of Ezekiel Samweli shows that the said Ezekiel Samweli resides at Kiru village within Babati District, but they claimed that they were looking for him in Arusha, at Moshono area which is a different area from what was stated in his statement. For him, the reasons advanced for their failure to procure those witnesses were too personal as no genuine reasons for such failure.

It was the further argued by the counsel for the Appellants that the trial magistrate believed and pointed out in his judgment that, among the reason that made witnesses not to appear in court was threat of being killed from the villagers of Kiru. That, there is no report made to the police station and no one was arrested regarding those threats. That, no one was mentioned among the Appellants or their relatives and until the case was decided, no one was killed or injured. That, this argument was weak and personal opinion by the magistrate.

Submitting on the tenth ground, the learned counsel argued that, it is not true that the Appellants raised the defence of alibi. That, the

Appellant only defended themselves but the trial magistrate failed to consider their defence.

On the first ground of appeal which touches standard of proof in criminal cases, the learned counsel pointed out doubts arising in the prosecution case. The first doubt was on the ownership of the alleged stolen goats. The counsel argued that from the evidence, two people were mentioned as owners of stolen goats; Hamir Estate Company and Paulo Bura. He contended that Hamir Estate being a company capable of suing and being sued, there was need for evidence to prove ownership of goat as per section 151 of the Companies Act, 2002, which is books of account showing all properties owned by the company. He added that all witnesses including the company director failed to point out features that were used to identify goats. That, apart from the claim for ownership by the company, WP. 7949 Fatuma recorded the evidence of Paulo Bura who informed her that the stolen goats belonged to him. To him, all these brings contradiction as to who was the true owner of the alleged stolen goats.

The second doubt pointed was the manner the incident was reported. He contended that there was contradiction as to who made the report and to whom the report was made. That, while PW1 claimed

that he was the one who informed other people, the record shows that he received the information at 13:00hrs, the time the incident was alleged to occur. That, he did not state how he got the information. That, PW2 claimed to receive a phone call from Paulo Bura but Paulo Bura's mobile phone was allegedly stolen during the incident. That, PW1 admitted that the farm had 5 guards but did not know their location at the time of incident. That, neither of those guards appeared to testify in court. That, PW1 testified that some of the goats were recovered at 19:00hrs and he is the one who informed the director on the incident. That, the director claimed that he received information at 14:00hrs and the same included the report on the incident that took place at 19:00hrs. That, PW1 was not at the scene at the time of incident and he was not involved in the search for the goats and did not state how he got the information on the search for goats.

The third doubt was on the disposal of the goats' carcasses. The Appellant's counsel argued that, ASP Kandola claimed that the same were disposed on 24/02/2022 and this contradicted PW5's evidence who claimed that he escorted Kandola for disposal on 14/03/2022. The last doubt is that, Kandola claimed to arrest the Appellants on 15/02/2022 but the record shows that they were sent to court on 21/02/2022. That,

the Appellants stayed in custody for 6 days and no reasons were advanced for such a delay contrary to section 50 and 51 of the Criminal Procedure Act. To him, the delay creates doubts and suggest that the Appellants were being forced to confess or were being framed for the case. The learned counsel prayed for the appeal to be allowed and the Appellants be released from prison.

Responding to the appeal, Ms. Riziki supported conviction and sentence imposed against the Appellants. On the 1st, 2nd and 3rd grounds she submitted jointly that, the Appellants were charged for the offence of armed robbery for stealing 41 goats the property of Hamir Estate Company Limited. That, before stealing they threatened Paulo Bura using sticks and machetes thus committed the offence of armed robbery. That, the evidence of PW2, Salim Issa reveals that he saw people who held Paulo Bura under hostage and left with the goats and among them were the Appellants who were carrying sticks and machetes. That, the evidence of PW2 was supported by PW1 who testified that Paulo Bura mentioned people who were responsible for the incident, the Appellant being among those people. That, CPL Fatuma tendered the statement of Paulo Bura indicating that Paulo mentioned the Appellant as among the people responsible for the offence and Paulo knew the Appellants before

the incident. That, PW5 Emanuel Kandola also testified that he was informed by Paulo Bura that the Appellants were among the assailant during the incident.

Referring elements of the offence of armed robbery under section 187A and the case of **John Makuya Vs. Republic, Criminal Appeal, No. 62 of 2022**, Ms. Riziki submitted that all three elements were proved as there was proof of stealing, threat and use of dangerous weapons. She asserted that, the prosecution evidence is clear that 41 goats were stolen by the Appellant and at the time of stealing the Appellants were carrying weapons which were sticks and machetes and the same were used to threaten Paulo Bura in order to obtain the said goats.

Responding to the contradiction on ownership of goats, Ms. Riziki submitted that the evidence by PW3 is clear that he was the owner of the farm where he was keeping 85 goats and 41 goats were stolen on that date. That, no other person complained about the stolen goats. That, WP Fatuma while tendering the statement of Paulo Bura testified that the goats belonged to Hamiri Estate and did not state that they belonged to Paulo Bura.

On the argument that PW1 did not state as where he got the information on the incident, the learned state attorney submitted that

PW1 at page 7 stated that he was informed by Paulo Bura over the incident and PW1 informed PW3. On the argument that, goats were recovered at 19:00hrs but the director testified that he was informed at 14:00hrs over the recovered goats, Ms. Riziki submitted that PW3 received information at 14:00hrs but did not state if the goat were already recovered. That, PW3 stated that the goats were recovered at 19:00hrs.

On the date of disposal of the goat carcasses, the learned State Attorney admitted that PW5 Sgt Said testified that the carcasses were disposed on 14/02/2022 contradicting ASP Emmanuel who testified that it was 24/02/2022. She however contended that, at page 30, the inventory form shows that it was 14/02/2022 thus, the contradiction was just typing error.

On the argument that the Appellants were arrested on 15/02/2022 and sent to court on 21/02/2022 suggesting that they were being forced to confess, Ms. Riziki submitted that after the arrest the file was to be sent to the State Attorney for preparation of charge. That, during the period complained of, the file was being prepared to be sent to court. She contended that during hearing of the case, no question was raised

against the investigator on the reason for delayed in charging the Appellants.

Responding to the fourth ground of appeal that 21 people were arrested but only 4 were charged, Ms. Riziki submitted that, there no record to that allegation. That, the investigator, PW5 Sgt. Said testified that in his investigation only the Appellants were the accused persons. That, PW4 ASP Emmanuel testified that he arrested 4 people who are Appellants herein. That, when the investigator and arresting officer testified in court, they were not cross examined on other 17 people alleged to be released. She added that, even if other people were released, it may be because after reading evidence, the State Attorney's office found no evidence to charge them with the offence.

Responding to the 5th ground that there was no fence in that area to conclude that the Appellants entered the complaint's area, Ms. Riziki submitted that, as per the evidence of PW3, although the farm comprise of 613 acres and no fence, he knew the boundaries. That, the farm had guards who were responsible to ensure no cattle owned by the investor goes out of the farm or no cattle belonging to other people enters the farm. That, the Appellants entered into the farm and they were arrested for stealing the goats therefrom.

On the 6th ground, Ms. Riziki conceded that PW3 testified without oath. She however argued that, PW3 was Hindu thus, could not testify under oath or affirmation as he is neither Muslim nor Christian. Ms. Riziki therefore did not agree with the prayer to expunge evidence of PW3.

On the 7th ground that the statement of witness who were not called in court were tendered contrary to law, it is the submission by Ms. Riziki that, a notice to tender statement was issued under section 34B (2)(a) of the Evidence Act, Cap 6 RE 2019. That, all procedures were followed before the same were admitted in court as per the ruling of the trial court which responded to the argument on reasons for failure to procure the witnesses.

On the 8th ground that prosecution witnesses were threatened not to appear in court, Ms. Riziki submitted that, the evidence of PW2 at page 12 shows that he turned hostile and was cross examined in court on his statement, exhibit PE1. That, when cross examined, he testified that he changed the story because he was threatened not to appear and testify in court. That, based on the evidence of PW2 witnesses were threatened not to testify in court. That, the argument on threat contained the truth and the trial court did not error in considering the threat in its decision.

On the 10th ground that the court erred to state that the Appellant raised defence of alibi, the learned State Attorney submitted that, the Appellants' defence reveals that they claimed not to be at the scene on the date of incident. That, they even presented witnesses intending to show that the Appellants were not at the scene on the date of incident. That, what the Appellants raised was the defence of alibi. She insisted that, the Appellants' defence was considered by the trial courts at page 6 of the judgment. The learned State Attorney prayed for this court to uphold the conviction and sentence imposed against the Appellants.

In a brief rejoinder the counsel for the Appellants reiterated what he submitted in chief and maintained that Hamis Almas was not informed by Paulo Bura over the incident. That, PW5 found Paulo Bura at the scene thus, it is not clear as to how he got the information. That, PW2 did not mention the Appellants as among the people he saw at the scene.

On the argument based on date of disposal of exhibit, he submitted that the claim that there was typing is unmaintainable. He added that, the preparation of charge does not justify the delay in prosecuting the Appellants. That, in his statement, Paulo Bura did not mention weapons which each of Appellants was holding at the time of

incident. That, the Appellants were not arrested at the investors farm but the argument was raised by the magistrate that since the Appellants were neighbours, they were probably responsible for stealing goats.

On admission of statement, the Appellants' counsel insisted that apart from following the legal procedures, there must be good reason why the witnesses could not be procured to testify in court. He maintained that there was no sound reason for the trial magistrate to admit those statements. On the issue of threat, the counsel submitted that if the witness was lying, it means he was not dependable witness and this discredit his evidence.

Regarding the defence of alibi, the counsel submitted that the interpretation by the trial magistrate resulted to the disregard of Appellants' defence. He added that, the accused are not bound to prove alibi. The Appellant's counsel therefore prayed that the appeal be allowed and the Appellant be released from prison.

I have clearly considered the grounds of appeal and the submissions by the parties for and against the appeal as well as the trial court's record. It is with no doubt that the current appeal entails the second scrutiny of evidence in record to see whether the case before the trial court was proved beyond reasonable doubt to warrant the

conviction of the Appellant for the offence of Armed Robbery. I will take a different approach in addressing this appeal by deliberating on matters which are in contention. From the grounds of appeal and the submissions by the counsel for the parties the following are matter in contention which needs court determination; **identification of Appellants, statement of witnesses who were not procured to testify in court, treatment of evidence of unsworn witness, ownership of stolen goats, defence of alibi and burden of proof.**

Starting with the issue of identification, the incident was witnessed by PW2, Salim Issa, Paulo Bura and Ezekiel Maliaki. PW2 turned hostile and in his evidence during cross examination mentioned Hamisi Hussein, Petro Charles, Yona, Israel and Philemon Jonas as people he saw at the scene but, did not mention the Appellants. The Appellants were only mentioned by Paulo Bura who was not procured to testify in court hence, his statement was tendered instead. Thus, the only tangible evidence on identification of the Appellants is the statement made by Paulo Bura at the police station. Other witnesses claimed that they were informed by Paulo Bura on involvement of the Appellants to the incident but did not witness the Appellants committing the offence.

The question is whether the statements of Paulo Bura and Ezekiel Maliaki which were not subjected to cross examination can be safely relied upon to convict the Appellants. The answer is obviously no. The circumstance of this case reveal that many people appeared at the scene causing commotion by putting Paulo Bura under hostage, threatening him before they fled away with 41 goats. PW2 appeared at the scene and witnessed Paulo Bura being held under hostage by people he mentioned as Hamisi Hussein, Petro Charles, Yona, Israel and Philemon Jonas. But in the statement Paulo Bura 11 people were mentioned and in the statement of Ezekiel Maliaki 12 people were mentioned as people who were holding Paulo Bura under hostage. Those people included Petro Charles and the Appellants; **Pius John, Alex Omary, Dismas Benjamini and Kennedy Daniel.**

From that evidence, different people were mentioned by witnesses who both claimed to witness the incident. It was expected for PW2 to clarify on the scene set up which could have led him to identify different people from those identified by Paulo Bura and Ezekiel Maliaki. Only one person Petro Charles was mentioned by both PW2, Paulo Bura and Ezekiel Maliaki. Thus, the statements of Paulo Bura and Ezekiel Maliaki on identification of the Appellants being not collaborated by PW2 who

was also at the scene, cannot be safely relied upon to convict the Appellants. I hold such conclusion in considering also the fact that Paulo Bura and Ezekiel Maliaki were not paraded in court and their evidence subjected to cross examination to eliminate possibility of mistaken identity. In my view, the evidence in relation to identification of the Appellants is crumbled as above explained.

On the issue regarding the statement of witnesses who were not procured to testify in court, the proceedings at page 19 shows that the statements of Paulo Bura and Ezekiel Maliaki were tendered and admitted as per the trial court ruling as exhibit PEII and PEIV under section 34B (2) (a) of the Evidence Act. The said section reads;

(2) A written or electronic statement may only be admissible under this section-

*(a) where its maker is not called as a witness, if he is dead or unfit by reason of bodily or mental condition to attend as a witness, or if he is outside Tanzania and it is not reasonably practicable to call him as a witness, **or if all reasonable steps have been taken to procure his attendance but he cannot be found or he cannot attend because he is not identifiable or by operation of any law he cannot attend;** (emphasis added).*

Starting with the statement of Ezekiel Maliaki, his particulars show that, he was born in Njiro area within Arusha District but at the time of making the statement, he was residing at Kiru Ward within Kirudick village in Mbugwe Hamlet. However, the summons was sent to Mtoni Street within Moshono Ward in Arusha District and not Njiro or Kirudick where the particulars of the statement show. The same was the case to Paulo Bura. His particulars show that, at the time he recorded the statement he was residing at Kiru Village within Kimara Ward in Mbugwe Hamlet. However, the summons was sent to Kirudick Village. All this shows that, no reasonable steps were taken to procure their attendance as required by section 34B (2) (a) of the Evidence Act. This defeats the weight and reliability of the two witness statements.

On the issue regarding the evidence of unsworn witness, it is clear that the learned State Attorney conceded that PW3 one Surenta Natha gave evidence without oath or affirmation. The learned state attorney contended that PW3 was a Hindu not prophesying Christian or Islamic faith thus could not be sworn or affirmed to testify in court. It is unfortunate that she did not mention the law which directs so. The law, under section 198 (1) of the Criminal Procedure Act, Cap 20 RE 2019

requires evidence to be recorded under oath or affirmation. The said provision read: -

*"Every witness in a criminal cause or matter **shall**, subject to the provisions of any other written law to the contrary, **be examined upon oath or affirmation** in accordance with the provisions of the Oaths and Statutory Declarations Act."*

Section 4 of the Oaths and Statutory Declarations Act, Cap 34 R.E 2019 mention persons who may be required to make oath or affirmation and it reads;

"4. Subject to any provision to the contrary contained in any written law, an oath shall be made by-

(a) any person who may lawfully be examined upon oath or give or be required to give evidence upon oath by or before a court;

(b) any person acting as interpreter of questions put to and evidence given by a person being examined by or giving evidence before a court:

*Provided that, **where any person who is required to make an oath professes any faith other than the Christian faith or objects to being sworn, stating, as the ground of such objection, either that he has no religious belief or that the making of an oath is contrary to his religious belief, such person shall be permitted to make his solemn affirmation instead of making an oath** and such affirmation shall be of the same effect as if he had made an oath."*

From the above provisions of Cap 20 and Cap 34, every witness in court proceedings must be sworn and this include even Hindu and non-believer. The law requires them to solemnly affirm instead of taking oath before testifying in court and their affirmation will take the same effect as oath. The consequence of recording evidence without oath or affirmation was well started in the Case of **Joseph Elisha Vs. Tanzania Postal Bank**, Civil Appeal No. 157 of 2019, where the Court of Appeal held that;

*"Since it is mandatory for the witnesses to take oath before giving evidence, its omission vitiates the proceedings. Faced with similar situation where witnesses testified without oath before the CMA, in the case of **Catholic University of Health and Allied Sciences (CUHAS) Vs. Epiphania Mkunde Athanase**, Civil Appeal No. 257 of 2020 (unreported), the Court stated thus:*

"Where the law makes it mandatory for a person who is a competent witness to testify on oath, the omission to do so vitiates the proceedings because it prejudices the parties' case."

*See also **Iringa International School Vs. Elizabeth Post**, Civil Appeal No. 155 of 2019 (unreported)".*

In the circumstances, since the PW3's testimony was taken without oath or affirmation, the same lacks evidential value.

Regarding the issue of ownership of stolen goats, I agree with the learned State Attorney that there was no contradiction on the ownership of goats as the evidence was clear that goats were stolen from the farm belonging to Hamiri Estate Company to which PW3 was the director. It is not true that someone else claimed ownership of the said goats. The contention that there was no evidence from the company is therefore baseless. PW3 being a company director could testify to protect the property of the company.

On the defence of alibi, it was contended by the Appellant that the trial court failed to consider the Appellants' defence on account that they improperly raised the defence of alibi. Going through the trial court's judgment, it is true that the trial magistrate treated the Appellants' defence as defence of alibi. This was so because their testimony was to the effect that they were not at the scene on the date of incident, a fact which suggest a defence of alibi. I however do not agree with the conclusion that their defence was not considered. At page 6 to 7 the trial court stated as follows: -

"In the present case there are similar facts as it was above. The present accused never give such notice which is mandatory requirement of our law. On other hands the defence which raised by all accused could not worth anything which we can say one was not seen at the area of scene. All of them appear to be around such locality on material day and time. The evidence of DW2, DW3 and DW4 is that they were at their respective home, making their usual daily activities. All of them told the court that they had their farms near or close to Hamiri Estate Ltd."

With the above statement, apart from concluding that the defence of alibi did not follow the procedures, it is clear that the trial magistrate considered Appellants' defence. But, the prosecution evidence considered by the trial court as strong proving that the Appellants were seen at the scene of crime.

On the last issue on burden of proof it was argued that, the offence of Armed Robbery was not proved against the Appellants on the required standards. The argument was based on weaknesses in prosecution case especially on identification, procedural irregularity on admission of statement of witnesses who were not procured to testify in court, treatment of evidence of unsworn witness and assessment of evidence relating to ownership of stolen goats and defence of alibi.

Considering the discussion on those issues, it is clear that there was no watertight evidence on identification of Appellants. The statements of the witnesses who were not procured in court were not collaborated hence could not be safely relied upon to convict the Appellant. The evidence by PW3 could not be relied upon as it was received without oath or affirmation. Although the trial court considered the Appellants' defense, issues related to identification of the Appellants, weaknesses in admission of statement of witnesses who were not procured to testify in court and the treatment of evidence of unsworn witness diminished the prosecution. It is therefore my conclusion that the prosecution case was not proved on the required standards in criminal cases that is, beyond reasonable doubt.

I therefore find merit in this appeal and allow the same. The trial court's judgment, conviction and sentence imposed against the Appellants are hereby quashed and set aside. The Appellants be released immediately from prison unless lawfully held for any other valid cause.

DATED at ARUSHA this 24th day of May 2023.




D.C. KAMUZORA

JUDGE

