**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(CORRUPTION AND ECONIMIC CRIMES DIVISION)**

**AT TANGA SUB-REGISTRY**

**ECONOMIC CASE NO. 01 OF 2022**

**THE REPUBLIC**

**VERSUS**

**ALLY OMARY ALLY @ MSAFI**

**JUDGEMENT**

**Last Order: 25/08/2023**
**Delivery Date: 27/09/2023**

**MANYANDA, J**

In this Economic Case No. 01 of 2022, the accused person namely, Ally Omary Ally @ Msafi, is charged with the offence of possession of property for commission of a terrorist act, contrary to sections 4(1) and (3) (i) and (i) and 15(b) of the Prevention of Terrorism Act, [Cap. 19 R.E. 2019] hereafter 'the POTA' read together with Paragraph 24 of the First Schedule to, and Sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, [Cap. 200 R. E. 2022], hereafter "the EOCCA". He is also charged with an alternative count of an offence of unlawful possession of armaments contrary to sections 11(1) and 18 of

the Armaments Control Act, [Cap. 246 R.E. 2019] (ACA), read together with Paragraph 32 of the First Schedule to, and Sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, [Cap. 200 R. E. 2022].

It was alleged that on 09/10/2016 at Negero Village within Kilindi District in Tanga Region, the accused was found in possession of armaments, to be precise, one hand grenade, while knowing that it will be used directly in whole for the purposes of commission of a terrorist act by attacking police officers and other peoples in the United Republic of Tanzania for the purposes of establishing an Islamic state within the United Republic of Tanzania through violent means, an act which involves prejudice to the national security and by its nature and context can reasonably be regarded as being intended for the purpose of intimidating a section of the public within the United Republic of Tanzania.

In respect of the alternative count, it was alleged that on the same day at the same place he was found in possession of armaments, to wit, one hand grenade, without authorization of the Armaments Control Advisory Board.

He pleaded not guilty to both counts, hence the case proceeded to full trial.

At the trial the Republic was represented by Ms. Verediana Mlenza, learned Senior State Attorney being assisted by Mr. Joseph Makene and Ms. Lulu Kimwendo, learned Sate Attorneys. The accused was represented by Mr. Christopher Wantora, learned Advocate.

Prior to hearing of this case, this Court had ordered protection of witnesses by assigning pseudo names with a letter "P" followed with a serial number. In order to prove their case, the prosecution paraded a total of nine (9) prosecution witnesses namely, **P10** who testified as PW1, **P9** testified as PW2, **P6** testified PW3, **P7** testified as PW4, **P** testified as PW5, **P5** testified as PW6, **P1** testified as PW7, **P8** testified as PW8 and **P4** testified as PW9.

The prosecution also tendered a total of four (4) exhibits namely, Exhibit **PE1**, a hand grenade, **PE2** Ballistic Expert Report, **PE3**, a certificate of Seizure, **PE4,** cautioned statement of the accused.

The accused manned his defence without calling any witness other than himself and tendered no any exhibit.

The evidence of the prosecution may be summarized as follows: -

**PW1, namely, P10,** a police and Ballistic Examiner at Forensic Bureau, Headquarters at Dar es Salaam. On 12/10/2016 while in his office received P6 from the Kilindi District OC – CID who had a letter from the RCO's office at Tanga and a hand grenade. The letter required him to examine the purported grenade and its hazard.

He marked it with label FB/BALL/LAB/137A/2016 and recorded the number in the register.

The exhibit was wrapped in a black nylon bag commonly known as 'Rambo' and it had a mark reading SON/IR/654/2016. He opened the said black nylon bag and found a hand grenade which he marked K1- F2 and with a register number FB/BALL/LAB/137A/2016 and wrote the words SON/IR/654/2016 on a piece of white paper and fixed it on the hand grenade.

Then he examined the exhibit by physical examination, that is, visual and touching.

He discovered that the hand grenade was made in Russia from industrial process and it was live. When its safety pin is removed it can explode in three (3) seconds causing total causalities within 20 and 30 meters.

He prepared a report dated 13/10/2016, for purposes of safety handling, repacked and sealed it in a transparent nylon bag. He stored it in exhibit room at the Forensic Laboratory.

On 14/10/2016 he handed back the hand grenade and his report to P6. He identified the hand grenade by its shape, that it looked like a gourd or 'avocado' fruit with a tip at the top. Also, by the marks he labeled on it "K1", then "F1 Offensive Hand Grenade", FB/BALL/137A/2016 and SON/IR/654/2016. He tendered the hand grenade as 'Exhibit PE1' and his report as 'Exhibit PE2'.

In cross examination he stated that although was not gazetted, was assigned to do the duties of ballistic examiner. He insisted that he worked on Exhibit PE1. He did not have any document to prove that he handed back Exhibit PE1 to P6 and that the same had no serial number which means all hand grenade of that type are identical. He did not know how the hand grenade was handled by others after returning it to P6.

The witness insisted that he used physical examination to estimate the radius of its harm. He did not have experience on bombs made in Russia as he did not go there or visit any hand grenade industry in Russia, it was just his words. He knew that a chain of custody is needed to

establish the handling of the Exhibit PE1 but he did not know the first document for establishing the same.

In re–examination in chief **PW1** said Exhibit PE1 was made in Russia based on its appearance especially the fuselage.

**PW2: namely P9** testified that on 09/10/2016 at Chumbageni Police Station while in his normal duties as an Exhibit Keeper received an item from P5 wrapped in a black nylon bag commonly known as Rambo which was suspected to be a bomb. He registered it into the exhibit register book as number 68 of 2016. He stored it in the armoury exhibits room.

On 12/10/2016 he handed the bomb to P6 per directives in a letter from the RCO and both signed in the exhibit register book. On 14/10/2016, P6 returned the bomb, this time it was is a transparent bag sealed with red seals written SON/IR/654/2016 and FB/BAL/LAB/137A/2016 and K – 1. He registered it in the exhibit register book in which both signed and kept it in the amoury exhibits room under his control as an Armoury Exhibits Keeper.

On 11/7/2023 brought the bomb in this Court and handed it to the Public Prosecutors he identified the bomb (Exhibit PE1) by its

appearance being small greenish in colour with a shape of a small gourd and the label on its container as well as on its body which is SON/IR/654/2016.

In Cross Examination by Mr. Wantora, he conceded that in his statement didn't state that he received a letter from the RCO or that the bomb was labeled with number SON/IR/654/2016. That it is a procedural requirement under the PGO to sign a handover document for purposes of keeping track on the hands an exhibit passes, but did not tender in court any such handing over document. That, when the bomb was returned to him had additional labels in addition to what he had marked on it and was in a different container.

That, there is no any other unique mark to differentiate the bomb in issue from other similar bombs apart from the labels and the container used in this case. He never saw any certificate of seizure in respect of the bomb. Further, that, in order for the bomb to be taken to Forensic Bureau, a written instruction by the RCO is necessary, I have not tendered the letter which instructed me to release the bomb to P6.

I don't know if there is any covering letter from police showing that exhibit SON/IR/654/2016 was taken to Forensic Bureau. He did not hand

the bomb to the "armoury room" but he kept it himself in "amoury exhibits room".

In re–examination in chief the witness clarified that he kept the bomb in the "armoury exhibits room" not in the normal "weapon armoury room" as the two rooms are different.

**PW3: namely, P6 testified that** on 11/10/2016 was instructed to take the bomb to the Forensic Bureau, on 12/10/2016 he picked the bomb from P9 and handed it to P10 at Forensic Bureau together with the RCO's letter. On 14/10/2016 PW3 went to the Forensic Bureau and collected the bomb from P10 which was in a transparent nylon bag with red seal on top labeled K–1, FB/BAL/LAB/137A/2016 and SON/IR/654/2016. He handed back the bomb to P9. In all handing overs he signed dispatch books. He was satisfied that the exhibit was the same because it bore the same marks SON/IR/654/2016 when he handed it.

On **cross examination he stated that he** did nothing other than taking the bomb to Forensic Bureau. That he did not tell any peculiar mark on the bomb apart from the marks he mentioned.

**PW 4: namely, P7** testified that he was trained as explosives expert within the police force, on 09/10/2016 was assigned a special task to do at Negero Village at Kilindi District where it was believed that there was a bomb hidden near a Mosque's toilet by the accused. They travelled to Negero, being five policemen and the accused where they arrived at about 1100 Hours and joined two other police officers.

When they got local village leaders and the Mosque leaders, the accused led them to a place where he had hidden the bomb about six meters from the Mosque, it was at a base of a wall of a toilet used by women at the Mosque where there was loose soil (tifutifu). He warned the persons around to step behind a bit for safety, then unearthed (fukua) the loose soil and found a black nylon bag which was tied at the top. In order to avoid using force to untie it, hence, likely to trigger the bomb, he used a razor blade to cut open the nylon bag and took out a hand grenade bomb.

According to this witness, the bomb looked like a small gourd, greenish in colour with a neck like top. The bomb was just stored not set (tegwa) for blasting. He took all care to see to it that the pin does not eject (chomoka) hence trigger it. They returned to Handeni Police Station at

1400 Hours after sketching the crime scene and other investigative actions to proceeded.

In cross examination he stated that he had no any search document when he recovered the bomb. That the soil at a hole where he recovered the bomb was loose but did not mention the instrument, he used hands to unearth the soil during recovery of the bomb and did not tender the black nylon bag in which the bomb was kept. He did not know who changed the container from black nylon bag to a transparent nylon bag he saw court.

**PW 5: namely, P** testified stating that being a police officer stationed at Negero Police Post in Kilindi District, between the years 2013 to 2016 there were some extremist groups of Islamic religion who established offensive camps at Madina Hamlet of Negero Village who were termed as terrorists. Those camps were dispersed after some perpetrators been arrested and others escaping.

In 2016, P4 (PW9) reported to him that there was a person called Ally Omary Ally @ Msafi who wanted to surrender himself to police. He advised P4 to bring the said Ally Omary Ally @ Msafi to him. That, in the evening of 08/10/2016 by 1700 Hours while in his normal duties was visited by four persons including P4 and the accused Ally Omary Ally @

Msafi, for purpose of the latter to surrender himself. That, he orally interrogated the said Ally Omary Ally @ Msafi who told him that he chose to surrender as his wife was being disturbed by police alleging that they wanted him. Then, P4 suspecting Ally Omary Ally @ Msafi to be among the perpetrators of terrorist acts some of whom were arrested and others escaped, relayed the information to the OCD of Handeni District. Since there was no lock up at Negero Police Post, he took the suspect to Handeni District Police Station.

On 09/10/2016 by 1100 Hours there came to him at Negero police officers namely P5 (PW6) and P7 (PW4) with the suspect Ally Omary Ally @ Msafi. The said police officers informed him that the suspect had a hand grenade which he hid at a toilet of a mosque used by Answar Sunn followers.

After getting local village leaders and the Mosque leaders, the accused led them to a place where he had hidden the bomb about six meters from the Mosque, it was at a base of a toilet wall used by women at the Mosque where there was loose soil (tifutifu). P7 unearthed a black nylon bag commonly known as Rambo which he recovered and opened it. Inside the Rambo bag there was a hand grenade. Since the bomb is dangerous, civilians were asked to step back a bit until it was

disconnected by removing the fuse. Then a seizure certificate was prepared and witnesses of the search together with the suspect signed.

**In cross examination** he stated that he did not have any documentary evidence of the accused involving in any terrorist acts or conspiring with any person. He conceded that he had no evidence in this court that there were persons arrested in suspicion of committing terrorist acts. Further that he did not convince or promise any favour for the accused to surrender and that although the accused who was a free agent before him, he did not tell him that he (accused) had a hand grenade hidden. That, he did not record the statement because investigation was still going on and that, the accused told him that he was tired of hiding hence wanted to surrender to police.

**PW 6: namely, P5, a police officer assigned by the Head-office to investigate serious crimes,** stated that on 08/10/2016 by 2000 Hours, was told through telephone by the Kilindi OC-CID that a suspect called Ally Omary Ally @ Msafi had surrendered to P. He relayed that information to police leaders at regional level, who ordered the suspect to be sent to Handeni Police Station, then to Tanga because the allegations of terrorism were serious.

On 09/10/2016 by 01:00 Hours, the accused was sent at Saruji Police Station which was a base for handling suspects of terrorism.

PW6 interrogated the accused during which he admitted complicity saying the purpose was to overthrow the Government and establish Islamic state, hence they were collecting weapons and recruiting youths to join them. Then the accused said to PW6 that he had a bomb which he hid at a base of a toilet wall of a Mosque used by Answar Sunn at Negero village, Kilindi and volunteered to go and show the place.

He informed the Regional Police Officers about that information, hence by 0630 Hours PW6 left with some other police officers including P7 together with the accused where they arrived at by 1100 Hours. At Negero he met P and informed him the purpose of returning the accused to Negero that he had disclosed to him (PW6) that he hid a bomb at the Answar Sunn Mosque toilet. After getting local village leaders and the Mosque leaders including P and P4, the accused led them to a place where he had hidden the bomb about six meters from the Mosque, it was at a base of a toilet wall used by women at the Mosque where there was loose soil (tifutifu). P7 unearthed a black nylon bag commonly known as Rambo which he recovered and opened it. Inside the Rambo bag there was a hand grenade. Since the bomb is

dangerous, civilians were asked to step back a bit until was disconnected by removing the fuse. He prepared a seizure certificate which was signed by himself, P1, P4, and the accused Ally Omary Ally @ Msafi and then took the hand grenade bomb and the accused from Negero to Handeni where he handed the accused to P8 (PW8) for recording a cautioned statement and handed the bomb to P9 (PW2) for keeping in the exhibit register and handed the case file to police leaders.

That, the accused didn't record a statement because P being a police officer of a rank of ASP had no authority to record the same. He tendered a certificate of seizure which was admitted in evidence and marked **'Exhibit PE 3'.** He saw the accused in good health and was not tortured all the time he was with him, he was supplied with food and time to rest and sleeping.

**In cross examination he stated that** the accused surrendered himself on 08/10/2016 and was sent to Saruji Police Post on 09/10/2016. PW6 stated further that what he did was merely discovery not search.

This Court observed that the witness mixed the words "search" and "discovery" being not a linguist expert that is not a great deal.

Then the witness went on testifying that apart from the bomb, the suspect had allegations of committing terrorist acts but was not arrested. That, he could not differentiate the bomb from similar others save by the labels marked on it. He did not know who changed the container in which the bomb was kept from a black nylon bag into transparent nylon one.

**PW7 namely, P1** stated that on 09/10/2016 by 1000 Hours was called through phone by P5 (PW6) and P7 (PW4), he went to the Mosque at Madina Hamlet, within Negero Village where he found P5, P7 and other police officers. He called P4 and other leaders of the Mosque following a request by P5. Then, the accused, Ally Msafi led them to a toilet used by women at the Answar Sunni Mosque where he showed a place he had hidden a bomb.

P7 unearthed loose soil at the base of a wall of the said toilet and recovered a black nylon bag when he opened it and found an object resembling a small gourd shape-like object with greenish colour.

He went closure after been assured that it was safe; he witnessed it to be a hand grenade bomb. Then, a form was prepared on which all namely, P4, P5, Ally Msafi and himself, signed. He led P5 in sketching a map after completing all left together with the hand grenade bomb.

**In cross examination the witness stated that in the court room** he did not see a black nylon bag in which the bomb was kept at the time of recovery and that he could not differentiate it from other similar bombs as he is not an expert of bombs. Further that he didn't know the suspect before and that in this case he only knew about recovery of a bomb at the crime scene, no more.

**PW 8: namely, P8, a police officer, testified that** in 2016 was in a team assigned a task of collecting of intelligence information about serious crimes such as cross border crime, terrorism and drug trafficking in Tanga Region. While in his duties, on 09/10/2016 by 0200 Hours recorded a cautioned statement of the accused Ally Omari Ally @ Msafi at Handeni District Police Station. He followed all the procedures laid down by the law such as introducing himself and informing him his rights including the allegations facing him as being among others involving in terrorist acts and unlawful possession of a bomb. He cautioned him about the effect of recording a statement and right to refrain from recording, calling a friend relative or a lawyer. Then, he proceeded on recording after getting a go ahead from the accused. After completion of recording, he gave the accused to read the statement followed by his certification. He tendered the cautioned statement which

was admitted in evidence as **Exhibit PE-4** after an objection to its admissibility based on involuntariness during its procurement been overruled in an inquiry, commonly known as a "trial within a trial".

**PW 9: namely, P4 testified that** in October 2016 he met the accused Ally Omary Ally Msafi, while in company with P3 (did not testify) and the said Ally Omary Ally Msafi told them that he was tired of *maisha ya kukimbia kimbia* (meaning hiding away life) he requested them to escort him to police so that he could surrender and start living with his family. The said accused sent him to ask the police if it was possible, after confirmation, in the evening of 08/10/2016 himself and P3 (did not testify) escorted the accused to Negero Police Station where they met P (PW5) and introduced Ally Msafi to him; they left after P receiving the accused.

On 09/10/2016 by 1100 Hours he went to the Answar Sunn Mosque at Negero following a call by P (PW5) through a telephone where he met P who introduced him to other police officers. Those police officers told him that the accused had volunteered to show a place where he hid a bomb. He saw the accused leading them to a base of the wall of a toilet used by women at Answar Sunn Mosque where there was loose soil "*palikuwa pamechimbwachimbwa*". Then he saw an uninformed police

officer went closer to the pointed place and after uncovering the soil with hands recovered a black nylon bag commonly known as Rambo bag inside it was a bomb which he knew after police saying so.

This witness said saw the hand grenade bomb, it had a shape of a small gourd or pineapple fruit with greenish colour. He signed on a paper prepared by P5 (PW6).

PW9 knew the accused as his co-villager at Negero living at Madina Harmlet and both professed Islam religion, however, about three years back to 2016 there came police who dispersed them, as a result he was hardly seen. Hence, he learnt that he was wanted by police. This witness closed is testimony in chief by stating that he never had any quarrel or grudges with the accused.

This court upon hearing the witness testimony and looking at his demeanour, he was observed with stable demeanour, appeared reliable, credible and telling the truth. His composure and capacity of speaking words without minting or stammering made this Court find him as credible and reliable witness.

Therefore, this Court after observing the demeanour of PW9, found that this witness was telling nothing but truth hence a credible and reliable witness.

**In cross examination he stated that the** leaders of the Mosque were not present, hence he represented them. This witness stated further that the accused Ally Msafi didn't tell them if he had a bomb before surrendering save that his family was being disturbed by police. He did not know if he committed any offence or that he had a gang at Madina with intent to commit any crime as he did not know what was happening at Madina in 2013.

After closure of the evidence by the prosecution, parties chose not to address the Court on a finding of a case to answer. However, after navigating through the evidence, in terms of section 41(1) of the Economic and Organized Crime Control Act, it was found that the accused had a case to answer. Then, after been addressed of his rights, the accused chose to defend by giving evidence on oath without calling any witness nor tendering any exhibit.

The accused, **Ally Omary Ally @ Msafi** testified as **DW1** stating that he currently lives in Dar es Salaam at Kigogo Mwisho area, however, prior to that he used to live at Madina Hamlet in Kimamba village until in

2015 when he shifted to Dar es Salaam. That in August 2016 while in Dar es Salaam he received a telephone call from his wife who was living at Negero Village that she was being disturbed by police who were looking for him (accused) as a wanted criminal.

He decided on 08/10/2016 to go to Negero where on arrival, in company of four other colleague villagers of Negero surrendered himself before (PW5), a police officer stationed at Negero Police Station. After been under custody by the said P was taken to Handeni Police Station where he stayed for about one hour, then was taken to Tanga where he was sent to Saruji Police Station. That, the police officers he found there started to accuse him of involving in terrorist acts. That he was beaten for about two hours by police in red hats thereby injuring and causing wounds on his back and both legs. He showed this Court what he called scars on the back near ribs and on the legs between knees and feet but the Court observed no remarkable scars.

That at dawn of 09/10/2016 by 0600 hours, the police officers took him to Negero village where they arrived at 11:00 a.m. Then, the police officers disembarked from the motor vehicle leaving him alone. He saw them heading towards a toilet used by women at Answar Sunn Mosque of Negero to a place they undug a bomb; then he was forced to sign a

paper of which contents he did not know. That the said police officers called villagers to witness the event. He was not told any allegation of committing an offence.

When they started to return from Negero, on arrival at Handeni, they found a witness namely P8 (PW8) who wanted to record his statement. They entered into a room where they were only two of them, and the said P8 didn't tell him any rights instead he directed him to answer questions that would put to him or else he could return him to Saruji Police Station where he knew he could be tortured again. He volunteered only part of the statement and signed it after completing due to fear of been beaten again.

That he was not treated the wounds he sustained during the tortures nor given a PF3 for the police feared revelation of the torture they inflicted on him.

The accused testified further that he was arrested in 2016, but the case was filed in 2022 because he was been charged and released four times at Handeni District Court. That he was not supplied with any food whole of the time since his surrender on 08/10/2016 at 1700 Hours until 09/10/2016, save for time to sleep or rest.

He denied committing the offence in the charge; he denied the allegations that he was found with a bomb for use in terrorist acts. He also denied to have been searched and found with a bomb at the Mosque area as alleged in the alternative count and prayed to be acquitted.

**In cross examination, DW1 denied knowledge of a** bomb recovery at Negero but admitted that he had no grudges with any of the prosecution's witnesses and that it is true that P4 told this court that it was him who led the police to the place the bomb was buried. He admitted also to have surrendered himself to police.

After closure of the evidence of both sides, the Counsel for both sides chose to make closing submissions which I need not to reproduce them here, but I will be referring to in this judgement.

As it can be gathered from the evidence the main issue in this case is whether the prosecution proved the charge of possession of property for commission of a terrorist act against the accused beyond all reasonable doubts.

It is a cardinal principle of the law in criminal law that the prosecution is required to prove their case beyond all reasonable

doubts; and that duty never shifts to the accused. In the case of **Pascal Yoya @ Maganga v. Republic,** Criminal Appeal No. 248 of 2017 (unreported) the Court of Appeal stated as follows: -

> *"It is a cardinal principle of criminal law in our jurisdiction that, in cases such as the one at hand, it is the prosecution that has a burden of proving its case beyond reasonable doubt.* ***The burden never shifts to the accused. An accused only needs to raise some reasonable doubt*** *on the prosecution case and he need not prove his innocence. In the just cited case of* ***Mohamed Haruna @ Mtupeni & Another,*** *Criminal Appeal No. 25 of 2007 (unreported) the Court stated that: -*
>
> > *'Of course, in cases of this nature the burden of proof is always on the prosecution. The standard has always been proof beyond reasonable doubt. It is trite law that an accused person can only be convicted on the strength of the prosecution case and not on the basis of the weakness of his defence'".* (emphasis added)

This Court also said in the case of **Mwita and Others v. Republic** [1977] LRT 54, as follows: -

> *"The appellants' duty was not to prove that their defence was true. They were simply required to raise a reasonable doubt in the mind of the magistrate and no more."*

This Court finds that in order for the prosecution to prove the charge against the accused, there are two main ingredients which were supposed to be proved which may be deduced into the following two issues, as follows: -

1 *One, whether the accused person was found in possession of the hand grenade;*

2 *Two, if the first issues is answered in the affirmative, whether he knew that the said hand grenade would be used directly in whole for purposes of commission of a terrorist act by attacking police officers and other peoples for the purposes of establishing an Islamic state within the United Republic of Tanzania through violent means, thereby involving prejudice to the national security intended for the purpose of intimidating a section of the public.*

It is important to note that the following relevant facts were undisputed by the accused during preliminary hearing held on 28/06/2023, that is, the names of the accused person as per information, that is to say: - Ally Omary Ally @ Msafi. That he surrendered himself to police at Negero Police Station in Kilindi District.

I will start with the first issue whether the accused person was found in possession of the hand grenade. In this issue, I will start with finding out what it means by a "hand grenade". In a dictionary called **Collins Cobbuild Advanced Illustrated Dictionary**, 2009, published by Harper Collins Publishers, Westhill Road, Bishopbrigs, Glasgow G64 2QT, Great Britain www.collins.co.uk at page 717 it is stated that "a hand grenade is the same as a grenade". Now a "grenade" is defined at page 695 as follows: -

> *"a grenade or hand grenade is a small bomb that can be thrown by hand".*

Moreover, according to the testimony of PW1 a ballistic expert who examined the object opined that it was a "hand grenade" which was made in Russia. He described the shape and size as being a small gourd or avocado fruit like shaped, greenish in colour. His report, Exhibit PE2 makes it vivid that the object he examined was a bomb called "hand grenade". PW1 testimony is supported by the testimony of PW2, the exhibit keeper, PW3 a police officer who sent it to the Ballistic Expert at the Police Forensic Bureau who also described the shape of object in issue as resembling a small gourd greenish in colour. PW4 is the one who retrieved the object from soil at the crime scene he described it as

a small bomb capable of being thrown by hands, that it looked like a small gourd, greenish in colour with a neck like structure at the top.

The evidence describing the size, shape and size by the prosecution evidence was not controverted by the defence evidence. Hence it is conclusive that the object in issue was proved to be a hand grenade, a small bomb capable of being thrown by hand. In this judgement, from here, it will be referred to simply as "the bomb".

Having thrown light as to the shape and size of the subject matter, let me address the question whether the bomb was found in possession of the accused.

The word "possession" is not defined under the Prevention of Terrorism Act (POTA). However, the superior Court of this land, the Court of Appeal of Tanzania, through cases without a number, has defined the term "possession".

For instance, in the case of **Mwinyi Jamal Kitalamba @ Igonza and 4 Others vs Republic,** [2020] TLR 508 the Court of Appeal of Tanzania stated as follows: -

> *"In view of the evidence as viewed above we think that all the Appellants* ***retained control over the tusks and this accordingly each of them had possession of***

***the tusks.*** *In the case of Simon* ***Ndikulyaka vs Republic****, Criminal Appeal No. 231 of 2014 (unreported) cited to us by Mr. Msemo, we applied our holding in the case of* ***Moses Charles Deo vs Republic*** *[1987] TLR 134 that: -*

> *'For a person to be found to have possession, actual or constructive, of goods, it must be proved either that he was aware of their presence and that he exercised control over them or that the goods came, albeit in his absence, at his invitation and arrangement but it is also true that mere possession connotes knowledge and control'"* (emphasis added).

See also the case of **Yanga Omary Yanga vs. Republic**, Criminal Appeal No. 132 of 2021 (unreported) cited by the State Attorney in which the Court of Appeal of Tanzania, by way of emphasis, cited the authority the case of **Moses Charles Deo vs. Republic (supra)**.

In this case, basically, the evidence adduced by the prosecution against the accused in this case and as rightly submitted by the Counsel for both sides, is of circumstantial in nature because there is no any person who eye witnessed the accused being in possession of the bomb. The said circumstantial evidence is in a form of confession.

As far as allegations of possession of the bomb is concerned, it was the submissions by the prosecution that the confession by the accused is both oral and written. That, the accused confessed orally before PW6 namely, P5, who interrogated him and admitted complicity stating that he had the bomb in issue which he hid at Negero at a base of a wall of a toilet of Answar Sunn Mosque used by women and led to that place where the bomb was recovered. The prosecution was of the view that that confession leading to discovery is reliable and credible as it was not challenged because the accused failed to cross examine on that incriminating piece of evidence.

As regard to written confession, the prosecution relied in the cautioned statement recorded by PW8 namely, P8, on 09/10/2016 in which the accused is alleged to have confessed to possess the bomb which he hid at Negero at a base of a wall of a toilet of Answar Sunn Mosque used by women and led that the place where the bomb was recovered. That, the accused was a free agent when he recorded the statement whereas following the confession a bomb was actually recovered.

In their submission, the defence basically admitted that a bomb was recovered at the base of a wall of a toilet used by women at the Answar Sunn Mosque of Negero. However, they denied the same to have been hidden there by the accused. Hence, they repudiate all the alleged confessions. That since the alleged confessions were made before police officers, then, the same was not voluntary.

The defence demonstrated the circumstances under which the alleged confessions were illegally obtained as follows: -

One, the witnesses' statements read before the committal court did not state that he confessed;

Two, the accused met these allegations in court during trial, hence, the evidence tending to implicate the accused basing on confession of possessing the bomb be disregarded; and

Three, since the accused was not sent to a justice of peace to ensure consistence of his confession, if at all, after allegedly confessing before PW8 in his cautioned statement, then, the alleged confession in the cautioned statement is unreliable.

The defence invited this Court to make use of the authority in the cases of **Republic vs. Daniel Ndababonye**, Criminal Session No. 13 of 2017 (unreported) in which this Court, Hon. Kilekamajenga, J. held *inter alia*

that retracted confessions are acted with cautiousness and **Kashindye Meli vs. Republic,** [2002] TLR 374 where it was held by the Court of Appeal of Tanzania as follows: -

> *"That by the nature of the statement, the extra-judicial statement was true and freely made by the appellant, and it is now settled law that although it is dangerous to act upon a repudiated or retracted confession unless such confession is corroborated, the court may still act upon such confession if it is satisfied that the confession could not but be true".*

The defence was reminding this Court to act on the cautioned statement with care because according to them, the circumstances under which the same was obtained signals involuntariness. That, the accused was not given time to rest, no food and was sent to Saruji Police Post for no reason where he was tortured.

From the evidence, it is clear that the accused volunteered to surrender himself to police and did so after making consultations with his fellow villagers. The evidence of PW9 namely, P4 is very clear that the accused consulted him on whether it was possible to surrender to police after been tired of living in hideouts (*maisha ya kukimbiakimbia*). This witness was categorical that the accused sent them to consult the police and he

did so; after confirmation he escorted the accused to PW5 namely, P where he surrendered himself.

The evidence of P (PW5) and P5 (PW6) is that after his surrender, the accused was sent to Tanga at Saruji Police Post which was selected as a base for handling terrorist cases investigation. That upon interrogation by PW6, the accused orally confessed to have not only involved in crimes concerning terrorist acts but also, he had a bomb which he hid in a hole at a base of a wall of a toilet used by women at Negero Answar Sunn Mosque and led the police to that place where the bomb was recovered.

This Court watched these two witnesses P and P5 when testifying and observed their demeanour, it found them as been credible and reliable as they were straight and withstood the lengthy cross examination with consistence. It has no reason to disbelieve them. The defence did not cross examine them on the aspect of confession by the accused other than alleging denial of time to rest and non-supply of food. However, P5 (PW6) made it clear that he interrogated the accused immediately after his arrival at Saruji Police Post at about 0700 Hours then he let him sleep until the morning when they started journey to Negero and was

supplied with breakfast on arriving at Handeni between 1000 Hours and 1100 Hours.

Apart from oral confession by the accuse as testified by PW6, there is also confession in a cautioned statement by the accused which was recorded by P8 (PW8) which was admitted after an objection on involuntariness allegation was overruled. According to the testimony of PW8, the statement was volunteered by the accused; it was recorded in a friendly environment after explaining the rights and were only two of them in the interrogation room.

Moreover, the accused admitted in court to have volunteered the information recorded by PW8 which he signed. The story by the accused that the statement was not read out to him was not believed by this Court as it was unsubstantiated. The complaint by the defence for the accused been sent to Saruji was explained by P5 (PW6) that it was a police post chosen to be a base for handling cases concerning terrorism.

It can be seen that the act of the accused been sent to Saruji Police Post in itself has no bearing with the recording of the statement the next day 09/10/2016 at Handeni Police Sattion. The complaint that the statement

was recorded out of the four hours was over ruled by this Court in an inquiry that investigation was still going on from one place to another especially the following up of the information that was volunteered by the accused for showing the bomb.

This Court finds that the confession in the cautioned statement, just as the oral confession, led to discovery of the bomb, hence makes the confessions, both oral and written, more reliable and supply guarantee of the truth of the concerned confession.

In the case of **Chamuriho Julius vs Republic,** Criminal Appeal No. 597 of 2017 (unreported) the Court of Appeal laid a firm the position of the law on reliability of confessions leading to discovery when it stated as follows: -

> *"But further to that, it is the stance of the law that, a confession leading to discovery is reliable. In the instant case, the appellants confession led to the discovery of the murder weapon. In* ***John Peter 23 Shayo and 2 others vs Republic*** *[1998] TLR 198 quoted in* ***Tumaini Daudi Ikera vs Republic****, Criminal Appeal No. 158 of 2009 (unreported) the Court observed as follows: -*
>
> > *'(i) Confessions that are otherwise inadmissible are allowed to be given in*

*evidence under section 31 of the Evidence Act 1967 if, and only if, they lead to the discovery of material objects connected with the crime, the rationale being that such discovery supplies a guarantee of the truth of that portion on the confession which led to it'".*

See also the cases of **John Shini vs Republic,** Criminal Appeal No. 573 of 2016 and **Melkiad Christopher Manumbu and 2 Others vs. Republic,** Criminal Appeal No. 355 of 2015 (both unreported).

This Court is aware that as a general rule, oral confessions of guilt are admissible though they are to be received with great caution, and section 27(1) and 31 of the Evidence Act, 1967 contemplates such confessions. It conducted an inquiry and removed all elements of involuntariness. Moreover, the Defence raised an issue of failure by the police to send the accused to a justice of peace in order to have him confess as a matter of assurance of consistency of the confession hence making it more reliable as was held by this Court in the case of **Danieal Ndababonye (supra)** quoting a principle of law from a case of the Court of Appeal of Tanzania of **Ndorosi Kudekei vs. Republic,** Criminal Appeal No. 318 of 2016 where it stated as follows: -

*"with the absence of the extra-judicial statement, the trial judge was not placed in a better position of assessing as to whether the appellant had confessed to having killed the deceased".*

I agree with the defence that as a matter of practice, it is advisable for a confessing suspect before the police to be taken to a justice of peace. However, that is not a mandatory legal requirement especially in exceptional cases where the confession appear to reliable and corroborated as it is in the instant case where the confession as explained above, led to discovery of the bomb. Therefore, this Court finds the **Danieal Ndababonye (supra)** and **Ndorosi Kudekei (supra)** distinguishable from the circumstances of this case.

There was a question of chain of custody which the defence submitted that there was break of the chain, hence the bomb brought in Court might be different. The prosecution maintained that the chain of custody did not break because handling the bomb was accounted for from the first person to handle it to the last one who tendered it in this Court. That, the bomb been an object which cannot change hands easily its chain of custody could be legally maintained without paper trailed. The prosecution relied on the authority in the case of **Issa Hassanm Uki**

**vs. Republic,** Criminal Appeal No. 129 of 2017 (unreported) where the Court of Appeal of Tanzania stated at page 11 to 12 as follows: -

> *In cases relating to chain of custody, it is important to distinguish items which change hand easily in which the principle stated in* ***Paulo Maduka and 4 Others vs. Republic,*** *Criminal Appeal No. 110 of 2007 (unreported) and followed in* ***Makoya Samwel @ Kashinjeand 4 Others vs. Republic,*** *Criminal Appeal No. 32 of 2014 (unreported and* ***Kashindye Bundala & Another vs. Republic,*** *Criminal Appeal No. 349 "B" & 352 "B" of 2009 (unreported) would apply. In cases relating to items which cannot change hand easily and therefore not easy to tamper with, the principle laid down in the above cases can be relaxed."*

The defence however maintained that the chain of custody ought to have been established by paper trail from the time of recovery of the bomb to the time of its tendering in this Court. It relied on the authority in the case of **Paulo Maduka (supra)**.

I think this argument should not detain me. My understanding of the law is that, initially, the principle strictly required that chain of custody be, in all cases, established by documentation from seizure of the exhibit to time of tendering in court. However, in **Joseph Leonard**

**Manyota vs. Republic**, Criminal Appeal No. 485 of 2015 (unreported), the scope of the principle was narrowed down so that it could not apply strictly to the exhibits that which cannot be easily tempered with.

This modified position has been consistently followed in the subsequent decisions of the Court of Appeal of Tanzania, such that, it has now become settled that, in fit cases, chain of custody can be established by oral account. See for instance, **Issa Hassan Uki v. R.,** Criminal Appeal No. 129 of 2017 (unreported), **Marceline Koivogui v. R**, Criminal Appeal No. 469 of 2017 and **Ernest Jackson @ Mwandikaupesi and Another v. R**, Criminal Appeal No. 408 of 2019 (all unreported).

In the case at hand, there was presented evidence which tracks the bomb from the area it was recovered to the time of it being tendered in this Court which is as follows: -

1 The testimony of P7 (PW4), an explosive expert, unearthed the bomb at Negero and handed it to P6 (PW5), the case investigator right at Negero;

2 P6 (PW5), handed the same to P9 (PW2), the exhibit keeper at Chumbageni Police Station;

3 The testimony of P9 (PW2), is that he handed the bomb to P6 (PW3), who was instructed to take it to the Forensic Bureau for examination, where he handed it to P10 (PW1), an explosive expert at Forensic Bureau who examined it;

4 P10 (PW1), after examining it and preparing a report he returned it to P6 (PW3), for returning it to the exhibit keeper;

5 PW6 (PW3), returned the bomb to the exhibit keeper P9 (PW2); and

6 P9 (PW2), the exhibit keeper handed the bomb to P10 (PW1) and the prosecutors whereas P10 (PW1), tendered it in this Court as Exhibit PE1.

From the explanations above it is obvious that the movement of the bomb was orally accounted for.

The question that follows is whether it is an item capable of changing hands easily. The prosecution answered this question in affirmative, while the defence answered it negatively. In my views, the answer, with due respect to the defence, is in affirmative. I say so because, a bomb which needs special care not only of handling in order to avoid its explosion but also been prohibited from possession without authorization

by the Armament Control Advisory Board must be secretly handled, cannot change hands easily.

The defence raised an issue of likelihood of having the bomb planted as the accused had no exclusive control of the toilet area where the bomb was recovered. He relied on the authority in the case of **Shaban Said Kindamba vs. Republic,** Criminal case No. 390 of 2019 (unreported). In my view, such a possibility is remote. I say so because, the evidence as explained above is plain that it was the accused who led to a place where the bomb was unearthed. This piece of evidence shows that the accused had exclusive knowledge and control of the place he hid it, that is, in a hole in which he buried it. The fact that he hid the bomb in a secret hole makes the same bomb to be in his knowledge only.

Therefore, the **Shaban Said Kindamba case (supra)** is distinguishable because in this case the issue is not on exclusivity of the toilet area but, exclusivity of knowledge of existence of the bomb in the secret hole, the accused can well be said to had have the bomb in his possession constructively, a situation fitting squarely the purview of the law on possession as elaborated in the cases of **Mwinyi Jamal**

**Kitalamba @ Igonza (supra)** and **Yanga Omary Yanga (supra)** illustrated above.

Moreover, the defence questioned identity of the bomb arguing that there were no peculiar marks to distinguish it from other similar bombs made by the same industry, hence likely it was planted. The prosecution maintained that the witnesses established that the bomb was the same in all the times.

This Court is of the view that the chain of custody explained above, removes from the prosecution evidence the doubt of having the bomb planted. The reason is that, the witnesses explained the marks they put on it. P10 (PW1), stated clearly that he changed the bag from opaque black nylon bag into a transparent clear nylon bag. He did so in order to enable any handler to see and know that it is a bomb in order to enhance handling care. That he maintained the marks reading the case file number SON/IR/645/2016, the mark that was put by P9 (PW2), the exhibit keeper after receiving it from P5 (PW6), the investigator who received it from P7 (PW4), the explosives expert who unearthed it at the very crime scene in presence of P5 (PW6). In Court Exhibit PE1 bore this

same identification mark, that is SON/IR/645/2016 which the handling witnesses identified. This Court fails to doubt these witnesses, as explained above they demonstrated reliability in court when testifying. The chain of custody been tight, this Court finds no reason to disbelieve them.

There was an outcry by the defence that the prosecution evidence is tainted with contradictions which goes to root of the case dismantling reliability of the prosecution evidence. The contradictions were mentioned to be in the testimony of P6 (PW5), the investigator that at one point he said he went to Negero for recovery of an exhibit and at another he said he went there for a search. Another contradiction is in the testimony of P9 (PW2) and P1 (PW7) and P5 (PW6) about the label marks on the Exhibit PE1.

This Court has gone through the testimonies of these witnesses and found that there are no serious contradictions. P6 (PW5), was very categorical in his testimony that he moved with the accused to Negero following his confession of possessing a bomb, a dangerous object, he had to harry to the place the accused promised to show it keeping in mind that a bomb is a dangerous weapon he had to act with immediate action. To him it was for recovering the bomb.

Moreover, the marks labelled on Exhibit PE1 were identified and explained by the prosecution witnesses substantially were the same seen on it in this Court.

It is trite that not every contradiction or discrepancy goes to the root of the case or is material as was stated by the Court of Appeal in the case of **Christian Ugbechi vs. Republic**, Criminal Appeal No. 274 of 2019 (unreported) cited by the State Attorney where at page 38 stated as follows: -

> *"However, the law is well settled that it is not every contradiction or discrepancy in evidence is material or goes to the root of the matter."*

Similarly in the case of **Said Ally vs. Republic**, Criminal Appeal No. 249 of 2008 (unreported) the Court of Appeal cited its own earlier decision in the case of **Chukwudi Denis Okechukwu and Three Others vs. Republic**, Criminal Appeal No. 507 of 2015 (unreported) where it stated as follows: -

> *"It is not every discrepancy in the prosecution case that will cause the prosecution's case to flop. It is only where the gist of the evidence is contradictory then the prosecution case will be dismissed.".*

As explained above, there are no contradictions going to the root of the case in this case.

In his defence, the accused alleged to have been tortured at Saruhi Police Post, however there was no supporting evidence. To the contrary, P6 (PW5) was not cross examined on issue of torturing the accused. In fact, the accused testified that neither P6 (PW5), nor P8 (PW8), did beat, threaten, torture or promise him any favour when they interrogated him. It was his allegation that here were other police officers wearing red hats, but, at the same time he conceded during cross examination that he was with P6 (PW5) and P8 (PW8) only during the concerned interrogations.

In Court, the accused showed what he called scars on the back, ribs and legs. However, not only that there were no visible scars but also, he did not tender any medical chit, on top of that there was no evidence revealing actual torture inflicted on him during interrogation, hence no link of scars to the confessions.

This Court finds that there was no proof of actual torture. Having analyzed in detail the evidence of both sides as far as possession of the

bomb is concerned, this Court finds that the Republic has proved that the accused possessed the hand grenade bomb.

The next issue is whether the accused knew that the said hand grenade bomb would be used directly in whole for purposes of commission of a terrorist act by attacking police officers and other peoples for the purposes of establishing an Islamic state within the United Republic of Tanzania through violent means, thereby involving prejudice to the national security intended for the purpose of intimidating a section of the public.

In this issue, the prosecution was required to prove the ingredients of the terrorist act as provided under section 4(1) and (3)(i)(i) of the POTA which reads as follows: -

> *"4(1) No person in the United Republic and no citizen of Tanzania outside the United Republic shall commit terrorist act and a person who does an act constituting terrorism, commits an offence.*
>
> *(2) NA*
>
> *(3) An act shall also constitute terrorism within the scope of this Act if it is an act or threat of action which-*
>
> *(a) NA*
>
> *(b) NA*

*(d) NA*

*(e) NA*

*(f) NA*

*(g) NA*

*(h) NA*

*(i) involves prejudice to national security or public safety, and is intended, or by its nature and context, may reasonably be regarded as being intended to-*

*(i) intimidate the public or a section of the public"*

The prosecution is required to prove that there existed an act which is a threat involving prejudice to the national security or public security intended by its nature and context to be reasonably regarded as intended to intimidate the public or a section thereof.

The State Attorney submitted that the evidence by the prosecution proved that the accused knew that the bomb would be used for committing the said terrorist acts.

The defence submitted that the prosecution failed to prove the charge to the required standard in criminal law. It was argued by the defence that neither *mens rea* nor *actus reus* had been established by the prosecution evidence. That, there has been mere allegations that the accused intended to harm the police with the bomb, but there no evidence showing that the accused did ever commit any terrorist act or

conspire with any person to commit such acts. That, the retracted confession lacks corroboration.

With due respect to the State Attorney, this Court, inclines to the defence that apart from allegations that the accused was suspected to have involved in terrorist acts at Madina Hamlet which was basically hearsay by police witnesses, not only that it was established by the prosecutions that there were terrorist acts committed at Madina Hamlet, Negero Village or elsewhere, but also that there is no scintilla of evidence implicating the accused with any terrorist act.

Hearsay has never been evidence at all in law. The Court of Appeal of Tanzania so held in the case of **Medson s/o Manga vs. Republic,** Criminal Appeal No. 259 of 2019 Unreported where it said as follows: -

> *"...With that understanding, what remained in place as evidence on the prosecution side was only that of PW4. That evidence of PW4 did not have any evidential value or credibility because it was **hearsay**. We so hold because, according to PW4 himself at page 12 of the record of appeal; **he was told by** PW1 and PW2 that the assailant was the appellant. According to **section 62(1)(a)** of the Evidence Act [Cap 6 R.E. 2019], oral evidence must be direct in all cases and if it refers to a fact which could be*

*seen, the relevant evidence must be of a witness who saw it."*

See also the decision in **Vumi Liapenda Mushi vs. Republic**, Criminal Appeal No. 327 of 2016 (unreported) where it was stated by the same Superior Court of our land, the Court of Appeal of Tanzania, that hearsay evidence has no evidential value.

The prosecution relied heavily on the confessional statements both oral and written cautioned statement by P6 (PW5) and P8 (PW8). The testimony of the investigator P6 (PW5), that the accused confessed to have been involved in terrorist acts together with other persons not charged in this case has no corroboration.

This Court finds so because, as explained above, the accused repudiated his confession. There are two pieces of confessions in his repudiated confession. The first piece concern repudiated confession for possession of the bomb which is corroborated by the evidence of recovery of the bomb at a place he volunteered to show. The second piece concern a repudiated confession that he intended the bomb to be used in terrorist acts. However, the act of admitting and showing of the bomb and its ultimately recovery corroborates only the fact that he possessed the bomb; it does not corroborate the repudiated confession that he

intended the bomb to be used in terrorist acts. There is no evidence corroborating that piece of repudiated confession. The reason is that it could also be possible for him to surrender the bomb as he did without the same to be used in terrorist acts, this remains suspicion.

It is trite law that however strong, suspicion cannot base a conviction. The Court of Appeal of Tanzania clearly stated this principle of the law in the case of **MT. 60330 PTE Nassoro Mohamed Ally vs Republic**, Criminal Appeal No. 73 of 2002 (unreported) as follows: -

> *"...The case against him [the Appellant] was based on suspicion. It is a principle of law that suspicion, however grave, is not a basis for a conviction in a criminal trial."*

This principle was restated verbatim by the Court of Appeal in the case of **Lidumula s/o Luhusa @ Kasuga vs. Republic,** Criminal Appeal No. 352 of 2020 which was decided on 26th August, 2021.

The prosecution is reminded that in criminal cases, it is the prosecution which is required to prove beyond all reasonable shadows of doubts about the offence charged. Courts of law do not assume evidence which has not been presented in court by competent witnesses. As explained above, as far as the allegations of intention of using the bomb in terrorist acts in the repudiated confession is concerned, the same needs corroborative evidence, which is lacking.

This Court has gone through the cautioned statement, Exhibit PE4 and found that the facts confessed to by the accused that led to recovery of the bomb are corroborated by the recovery of the bomb itself under superintendence of the accused. However, recovery of the bomb does not corroborate the allegations that the bomb was intended to be used to commit terrorist acts or that the accused intended to use or that he knew the same could be used in terrorist acts. There ought to be independent evidence to corroborate not only existence of terrorist acts at Negero or elsewhere but also, that the accused intended to have the bomb used to be used in committing terrorist acts.

It is on these reasons that this Court finds the second issue answered in negative, hence the charge falling short of proof.

Consequently, this Court finds the accused not guilty and doth hereby acquit him from the charge of possession of property for commission of a terrorist act, contrary to sections 4(1) and (3) (i) and (i) and 15(b) of the Prevention of Terrorism Act, [Cap. 19 R.E. 2019] hereafter 'the POTA' read together with Paragraph 24 of the First Schedule to, and Sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, [Cap. 200 R. E. 2022], hereafter the EOCCA.

However, in this case, the accused is charged with an alternative count of possession of the bomb without authorization from the Armament Control Advisory Board. It is trite law that where an accused before a court of law is charged with an alternative count(s) of charges of criminal offence(s), a court of law may convict with the alternative count proved by the evidence after acquitting form the charged count(s), but not in both counts.

In the case of **Sophia Emmanuel v. Republic,** Criminal Appeal No. 443 of 2017 (unreported) decided on 27th August, 2021 the Court of Appeal of Tanzania held *inter alia* as follows: -

> *"We had opportunity to peruse the entire record of appeal and we agree with the counsel for the parties that, the appellant was neither acquitted nor convicted in respect of the first count of stealing as required by the above law. It is important to note that since the second count was in the* ***alternative****, the trial court had no basis for considering it* ***before first finding the accused/ appellant not guilty of the first offence.****"*

A hand grenade is specifically included in the definition of armaments under section 4 of the Armaments Control Act, the relevant part reads as follows: -

*""**armaments"** means arms of war, whether complete or in parts and ammunition for them, namely, firearms, artillery of all kinds, apparatus for the discharge of all kinds of explosive or gas diffusing projectiles, flamethrowers, bombs, **grenades,** machine guns, rifles, and small-fire breech-loading weapons of all kinds;"*
(emphasis added)

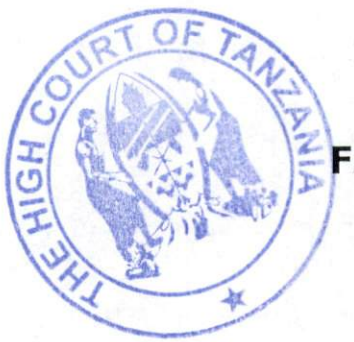
From the analysis of evidence above, this Court has made a finding that the accused was found in possession of the hand grenade (the bomb), which is an armament under the Armaments Control Act, without authorization from the Armament Control Advisory Board, an act criminalized under sections 11(1) and 18 of the Armaments Control Act.

Therefore, it finds that the alternative offence of unlawful possession of armaments contrary to sections 11(1) and 18 of the Armaments Control Act, read together with Paragraph 32 of the First Schedule to, and Sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, as proved. The offences under the Armaments Control Act, by virtue of section 57(1) of the Economic and Organized Crime Control Act, are economic offences.

In the upshot, for reasons stated above, this Court finds the accused guilty with the economic offence of unlawful possession of armaments Consequently, I do hereby convict the accused, Ally Omary Ally @ Msafi,

with the offence of unlawful possession of armaments contrary to sections 11(1) and 18 of the Armaments Control Act, read together with Paragraph 32 of the First Schedule to, and Sections 57(1) and 60(2) of the Economic and Organized Crime Control Act. Order accordingly.

Dated at Tanga this 27th day of September, 2023




**F. K. MANYANDA**

**JUDGE**