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

**(MOROGORO SUB-REGISTRY)**

**AT MOROGORO**

**CRIMINAL APPEAL NO. 4 OF 2022**

*(Arose from Criminal Case No. 31 of 2021; in the District Court of Mvomero, at Mvomero dated 16th June, 2022)*

**BETWEEN**

**MWICHANDE HAJI @ MNDIMA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

14th Dec, 2023

M.J. CHABA, J.

This is an appeal against the conviction and sentence entered against the appellant, Mwichande Haji @ Mdima by the District Court of Mvomero, at Mvomero on 16th June, 2022. According to the records, the appellant was arraigned before the trial Court charged with the offence of obtaining money by false pretence contrary to sections 301 and 302 of the Penal Code [CAP. 16 R. E. 2019], now [R. E. 2022], and accordingly was sentenced to serve a term of three (3) years imprisonment.

Discontented with the decision of the District Court, the appellant appealed to this Court against both conviction and sentence based on the following seven (7) grounds of appeal: -

1. That, the trial Magistrate erred in law and in fact for convicting and sentencing the Appellant relying on a defective charge sheet;
2. That, the trial Magistrate erred in law and in fact for convicting and sentencing the appellant basing on prosecution Exhibit P1 which was not read in court at the time of its admission;
3. That, the trial Magistrate erred in law and in fact by concluding that the Appellant received money without proving the names and number received the said money;
4. That, the trial Magistrate erred in law and in fact for failure to analyze and evaluate evidence tendered before the court;
5. That, the trial Magistrate erred in law and in fact for shifting burden of proof to the appellant;
6. That, the trial Magistrate erred in law and in fact by admitting exhibit P1 which was improperly tendered and consequently relied on it to convict and sentence the appellant;
7. That, the trial Court erred in law and in fact for convicting and sentencing the appellant herein, while the prosecution case was not proved beyond reasonable doubt.

At the hearing of the appeal, the appellant appeared in person, and unrepresented, whereas the Respondent/Republic had the legal services of Mr. Emmanuel Kahigi, Learned State Attorney. With the parties' consensus, it was agreed that this appeal be argued and disposed of by way of written submissions, and both parties complied with the Court's scheduled order. The appellant's written submission was drawn and filed by Mr. Nesto Adam Mkoba,

learned advocate while the respondent's reply to submission in chief was drawn and filed by the Office of the National Prosecutions Services, Morogoro Regional Office.

Before commencing to argue in support of the appeal, Mr. Mkoba prayed first to abandon ground five (5) and stated that, the remaining grounds of appeal that is, 2nd, 3rd, 4th, 6th and 7th respectively, will be argued seriatim and the 1st ground will be the last ground dealt with.

Arguing on the 2nd ground of appeal, Mr. Mkoba submitted that, looking at the proceedings of the trial Court, the same reveals that, the prosecution tendered only one Exhibit (Exhibit P1), a printout records of mobile phone, resulted from Vodacom number 0766-067790 which was tendered in evidence by the prosecutor as indicated at page 3 of the typed copy of judgment as well as at page 47 of the typed copy of proceedings.

He averred that, the record shows, soon after, the preliminary objection raised by defence side was overruled, the trial Court admitted Exhibit P1, and proceeded to record the evidence tendered by PW3. He went on stating that, whenever documentary evidence is introduced and admitted in Court as evidence, the witness tendering such documentary evidence, after its admission, has to read it loudly in Court and explain its contents. He stated that, the rationale behind reading audibly an exhibit in Court is to inform the accused person on the nature and contents of the tendered exhibits.

He submitted that, in the instant case, when the Exhibit P1 was admitted in Court, the same was not read loudly as required by the law, as the proceedings and judgment do not suggest to that effect. To buttress his argument, Mr. Mkoba referred this Court to the cases of **Yeriko Yohanes Nyerere Vs. Republic**, Criminal Appeal No. 125 of 2021, **Michael Mwakalula Njuma & Another Vs. Republic,** Consolidated Criminal Appeal No. 376 of 2020, Court of Appeal of Tanzania, at Dar Es Salaam (unreported) and **Aniseth Ibrahim & Another Vs. Republic,** Criminal Appeal No. 227 of 2018, Court of Appeal of Tanzania, at Mbeya (unreported) citing the case of **Robinson Mwanjisi & Others Vs. Republic, [2003] TLR 218.** The CAT in the case of **Aniseth Ibrahim & Another Vs. Republic (supra),** held *inter-alia* that: -

> *"in the present case, it is glaring at page 50 and 56 of the record of the appeal that, after the certificate of seizure (exhibit PEJ), the cautioned statement of the second appellant (exhibit PS) and the certificate of valuation of government trophies (exhibit PE6) were admitted in the evidence without being objected, however, the trial court omitted to read over the contents of the exhibits to enable the appellants to understand and make a meaningful defence including cross examining the witness on the said documentary evidence. The omission was fatal as it occasioned a miscarriage of justice to the appellants who*

*though were present throughout the trial, they were convicted on the basis of the documentary account they were not made aware of which is irregular."*

In his view of the above guided principle, Mr. Mkoba submitted that since Exhibit P1 was not read audibly during hearing, it deserves to be expunged from the Court record. He underlined that, once the same will be expunged nothing will remain in the Court record to prove the offence which the appellant stand charged. He therefore, prayed the Court to allow the appeal and the appellant be acquitted.

On the 3rd ground, Mr. Mkoba faulted the findings of the trial Magistrate upon concluding that, the appellant received money without proving the names and phone number that he received the said money, and that the appellant was the owner of the mobile phone that received the money. He added that, even in the judgment of the trial Court, no any phone number of the appellant was mentioned.

He was of the view that, for prosecution to prove the owner of the phone numbers: 0766 - 062 790, they were supposed to call a witness from Vodacom Company Limited as a custodian of voda phones numbers, who registered the owner(s) or they were supposed to call an expert person from cybercrimes unit, who would testify as to who was the owner of the said mobile phone and verify if it was true that, the same did belong to PW3.

The counsel for the appellant lamented that, according to the records, the trial Magistrate changed his role and became a witness by believing that, the said phone numbers did belong to the PW3 and that the appellant received the money. He was of the view that, merely sending some money using mobile phone numbers - 0766 062 790, does not mean that, the phone numbers belonged to PW3 without a proof on the test of criminality.

Submitting on the 4th ground, Mr. Mkoba averred that, the trial Court did not evaluate the evidence adduced before it as required, and that if the trial Court would have performed well her duty, perhaps would not have reached to a different conclusion. He underlined that, the evidence tendered in Court incriminating the appellant are the testimonies of PW1, PW3 and PW4 who stated that, the appellant received money from PW3 and PW4. With regards to the evidence adduced by PW1, the police investigator, his testimony shows that, the appellant received twenty (24) million from PW3 and PW4, but the charge sheet indicates that, the amount received by the appellant was TZS. 22 million.

He submitted further that, at page 37 of the proceedings, PW3 testified that, in different times, PW3 sent money to the appellant via a mobile phone. He told the trial Court that, he sent or transmitted TZS. 2,000,000/= to the appellant through a mobile phone number 0766 - 062 790. He submitted further that, on page 37 of the proceedings, PW3 testify to have also sent to the appellant TZS. 16,000,000/= using her mobile phone.

He averred that, using simple mathematics, the evidence of PW3 shows that, the money that was sent to the appellant by her is TZS. 18,000,000/= plus. He asserted that, on page 30 of the typed proceedings, PW4 stated that in January, 2020, PW4 sent some money to the appellant for hiring a farm, and further that, he sent Two (2) Million to the appellant. Again, on page 31 of the same proceedings, PW4 told the trial Court that he sent or transmitted to appellant TZS. 16,000,000/= and TZS. 6,000,000/= respectively. This means that, the total amount of money that PW4 sent or transmitted to the appellant is TZS. 24,000,0000/= (Tanzanian Shillings Twenty-Four Million).

The testimony of PW4 reveals further that, apart from the above stated amount, he also managed to send to the appellant some money and other money was sent to the appellant through agent. However, Mr. Mkoba argues that, there are contradictory evidence as to who between the two (PW3 and PW4) sent the money to the appellant and further that there is another contradiction on the amount stated in the charge sheet with what PW3 and PW4 testified in Court, because the evidence of PW3 shows that she is the one who sent the money to the appellant amounting to TZS. 18,000,000/= plus, whereas the evidence adduced by the PW4 shows that he sent a total of TZS. 24,000,000/= to the appellant.

With the above pieces of evidence, the counsel for appellant argues that in the circumstance, it is unknown who between PW3 or PW4 sent the alleged money to the appellant, and that who between the two should the Court believe

to have sent the money to the appellant, what is the actual money sent to appellant, that is the one indicated in the charge sheet or the figures mentioned by the PW3 and PW4 during the trial. He was of the view that, the above noted contradictions are supposed to be resolved in favour of the appellant.

Further, the counsel for the appellant complained that, there is no one whose names is called agent who appeared before the trial Court and testified to the effect that, he or she sent money to the appellant as claimed by PW4 and further, there is no any proof showing that the said money was sent from a certain person to the appellant. He averred that, considering the evidence of PW3 who testified that she sent TZS. 18,000,000/= to the appellant whereas PW4 recounted that he sent TZS. 24,000,000/=, the question that arises in the circumstance is this, if at all, the money was sent to the appellant as testified by the PW3 and PW4 respectively, should any reasonable person anticipated that the charge sheet would have contained different amount or figures, i.e., TZS. 22,027,000/=.

Based on the above pieces of evidence, Mr. Mkoba was of the view that, all the above highlighted differences create variation of the evidence adduced by the prosecution witnesses (PW1, PW3 and PW4) and the amount purported to have been obtained by false presence as indicated in the charge sheet, in his opinion, this appeal should be resolved in favour of the appellant.

Moreover, the counsel contended that, if at the time of testifying in Court, the prosecution discovered that, the amount stated in a charge sheet was/is

different from the amount testified by witnesses, the prosecutor would have requested the trial Court to allow the prosecution side to amend the charge sheet, and the appellant would have been informed accordingly. According to him, as the same were not done, it is fatal as it was held in the case of **Handa Manyama Vs. Republic,** Criminal Appeal No. 115 of 2013, CAT at Mtwara (unreported).

On 6th ground, counsel averred that, at a time of hearing this matter, the trial Magistrate erred in law and in fact by admitting Exhibit P1 which was improperly tendered and consequently relied on it to convict and sentence the appellant. He said, on page 37 at second paragraph of the proceedings, the prosecutor introduced and tendered statement of the transaction as an exhibit while he was not supposed to pray and tender the exhibit as he was not a witness sworn before the Court. To fortify his stance, the counsel cited the case of **Adam Salehe @ Ramadhani Vs. Republic,** Criminal Appeal No. 447 of 2020 CAT at Dodoma (unreported), where the Court on pages 13 to 14 of the impugned judgment, expunged exhibits which were tendered in Court by prosecutor. He therefore underlined that since, the exhibit that resulted to the conviction of the appellant was introduced and tendered in Court by a person who was not competent to do so, the same could not be used to convict the appellant.

As regards to 7th ground, Mr. Mkoba cited section 3 (2) (a) of the Evidence Act, [CAP. 6 R. E. 2022], which requires that, in convicting the accused,

prosecution side has to prove their case beyond reasonable doubt and further contended that, the prosecution side did not prove its case beyond reasonable doubt for the reason that, looking at the charge sheet, the same tells that, the money sent to the appellant was from Thomas Mwenyeheri @ Mzava and Suzan Milton @ Makawia (PW4 and PW3) but the charge sheet do not tell what amount was the property of Thomas Mwenyeheri (PW4) and what amount did belong to Suzan Milton (PW3). In his view, such confusion made the charge impossible to be proved in Court beyond reasonable doubt.

In respect of 1st ground, Mr. Mkoba substantiated that, the charge laid against the appellant before the trial Court was defective, thus could not be relied upon to convict the appellant. He asserted that, for a charge to stand, it was supposed to be framed in a manner that, whatever is written therein, would have made the appellant/accused stand accurately informed. He complained that, the charge against the appellant had two basic areas that were not properly communicated to the accused to wit; one, is the dates in which the offence was committed, and second, who was affected by the offence.

He argues that, the dates mentioned in the charge sheet are not clear as the appellant/accused wasn't in a position to know when the incidence took place. Since, the charged offence is obtaining money by false pretence, it was expected that the prosecution side would have stated the specific dates when the money was sent to the appellant/accused. To cement his argument, he cited the case of **Ally Hamad Bakari Vs. The Republic,** Criminal Appeal No.

335 of 2017, HCT at DSM (unreported), while the Court referring to the case of **Anania Triauna Vs. Republic**, Criminal Appeal No. 195 of 2009, the Court observed thus: -

> *" .... When specific date of commission of the offence is mentioned in the charge sheet, the defence case is prepared and built on the basis of that specific date ... ".*

He concluded that, in this case, failure for the charge sheet to mention dates in which the offence was commited, is fatal leading to miscarriage of justice and therefore urged the Court to allow the appeal and acquit the appellant forthwith.

Opposing the appeal, the Respondent/Republic through the learned State Attorney Emanuel Kahigi, opted to firstly submit on the 1st, 2nd and 6th jointly, followed by the 3rd, 4th, 6th and 7th grounds separately. On the first ground of appeal, he averred that, there is no any defect on the charge sheet as the appellant was able to understand the offence facing him and not only that, when the charge was read over and fully explained to him, he pleaded not guilty to the charge. He added that, the accused was able to know the seriousness of the offence facing him and he was able to intensively cross-examine all prosecution's witnesses and defend it. To bolster his stance, the learned State Attorney referred the Court to the case of **Joseph Maganga Mlezi and Another Vs. The Republic,** Criminal Appeal No. 536 & 537 of 2015 at page seven (7) (unreported), where the Court stated that, the issue for consideration

is whether the appellants could not understand the nature and seriousness of the offence and were inhibited from making proper defense. He argues that, if the appellant was able to understand the nature and seriousness of the offence facing him, and made a defence, then if there is any defect on the charge, such a defect can be cured under section 388 of the Criminal Procedure Act, [CAP. 20 R. E. 2022].

The State Attorney contented that, the appellant knew the seriousness of the offence facing him and that is why he made his defence disputing one fact after another and hence the appellant's accession that, he failed to make a proper defence for failure by the prosecution to mention a specific date of commission of an offence in a charge sheet in this case, the same cannot anyhow apply, for a reason that it is an afterthought.

Replying on the 6th ground of appeal, the State Attorney averred that, the appellant's conviction did not only base on the Exhibit P1 but also on the strong prosecution evidence given by PW1, PW2, PW3 and PW4 as reflected on page 13, paragraph two of the trial Court judgment. According to him, even if Exhibit P1 can be expunged from the Court record, still there is oral account of what was contained in such exhibit.

To fortify his contention, the State Attorney cited the case of **Abas Kondo Gede Vs. Republic,** Criminal Appeal No. 472 of 2017 (unreported) at pages 20 & 21, where the Court observed that: -

*" ... oral evidence being one of the method of receiving evidence in a court of law, is crucial in proving a particular fact and the court is entitled to rely on it in reaching its conclusion".*

He admitted the fact that, the Respondent/Republic is aware of the law of practice as it was underscored by the CAT in the case of **Robinson Mwanjisi and Others Vs. Republic, [2003) TLR 218,** that failure to read the document after its admission is fatal but in its recent decision via the case of **Joseph Maganga Mlezi and Dotto Salum Butwa Vs. Republic,** Criminal Appeal No. 536 & 537 of 2015 (unreported), the Court modified the rule to the effect that, if the contents of the document are explained by the witness as it was the case in the case present appeal, the essence of reading out the document is to enable the accused person to understand the nature and substances of the facts contained in order to make informed defence.

On the 3rd ground, the State Attorney contended that, there are ample evidence given by PW3 and PW4 to prove the fact. He argues that, for instance, the evidence adduced by the PW4 shows that after the appellant had taken him to the rice milling machine of which PW2 is the supervisor and introduced him the owner to be Mr. Oswald and shown him 534 sacks of paddy, PW4 said that he gave him TZS. 6,000,000/= for the purpose of buying him 200 sacks of paddy. He submitted that, PW3 and PW4 identified the appellant by his names at the trial Court.

From the above submission, the State Attorney stated that since this 3rd ground of appeal has no merit, he therefore prayed the Court to dismiss it in its entirety.

Rebutting the 4th ground, the State Attorney argues that, on pages 6, last paragraph to page 7 on the 1st paragraph of the impugned judgment, the trial Court analyzed the evidence of PW4, whereas on page 7 of the judgment in the second paragraph, the trial Court analyzed the evidence of PW3 and PW4 against that of the appellant. He said, the trial Court went further and analyzed the evidence of PW2 as shown at page 8 in the second paragraph. Further analysis on both evidence (prosecution and defence) is reflected on page nine (9) of the judgment.

With regards to the 6th ground, again, the State Attorney attacked the appellant for misinterpreting the finding and reasoning of the trial Court's judgment on page twelve (12). He accentuated that, on the third paragraph, the trial magistrate tried to assess the evidence on records as a whole and in the process, he sought assistance from the precedent of **Miller Vs. Minister of Pension (1947) All E.R. 372**, and banked on that position of the law when he was evaluating the evidential value of Exhibit P1, and reasoned that even though it had its short coming, those short coming were neglectable as compared to other prosecution evidence available on records.

Concerning the 7th ground, it was the learned State Attorney's argument that, the PW1, PW2, PW3 and PW4 were credible witnesses and that, they were

all consistent while testifying during examination in chief and cross examination as well. The stated that, they gave money to the appellant believing that he was going to buy them paddy while he knew that, he was not going to buy the same.

In the end, the Respondent/Republic beckoned upon the Court to uphold the conviction and sentence of the trial Court and the appeal preferred by the appellant be dismissed.

By way of rejoinder, Mr. Mkoba, counsel for the appellant stressed that, failure by the charge sheet to state when (specific date) the offence was committed made it made it very difficult for the appellant to defend himself, and understood the nature and seriousness of the offence. He argues that, the defect cannot be covered or salvaged by the provision of section 388 of the Criminal Procedure Act, [CAP. 20 R.E. 2022], as suggested by the State Attorney.

In respect of 2nd and 6th grounds, he emphasized that once Exhibit P1 will be expunged from the Court record, the remaining oral evidence testified in Court by the PW1, PW2, PW3 and PW4 creates doubts which are to be resolved in favour of the appellant. He highlighted the doubts among others to be; on who between PW3 and PW4 sent or transmitted the money to the appellant as both PW3 and PW4 testified to have sent money to the appellant of which the amounts were stated in the charge sheet. Secondly; in which manner the money was received by appellant, again this is the matter at issue, and thirdly;

whose phone number received the money from PW3 and PW4, is also another factor which is uncertain.

On the 3rd, the counsel rejoined by reiterating his submission in chief and prayed the Court to allow the appellant's appeal. Regarding the 4th ground, Mr. Mkoba re-stated that, the trial Court was duty bound to analyze the evidence tendered before it, as it appears in the proceedings. He submitted that, if the trial Court would have properly analyzed the evidence before it, it would have noted that, both the PW3 and PW4 testified that they sent money to the appellant. He emphasized that, such contradictions would have resolved in favour of the appellant.

Rejoining on the 7th ground, Mr. Mkoba insisted that, the case against the appellant at trial was not proved beyond reasonable doubt and the reasons are obvious. That, the prosecution witnesses contradicted themselves as who sent the money to the appellant. And if any, by which means and even the amounts, if any, have been difficult to ascertain clearly, and that there is no any proof out of mere statements that the appellant received the money from PW3 and PW4.

In lieu of the above submission by way of rejoinder, the appellant prayed that, this appeal be allowed.

I have objectively gone through and considered the records of both the trial Court and this Court as we as the rival submissions made by the learned Counsel and State Attorney. The crucial issue for consideration, determination

and decision thereon is whether or not the prosecution case was sufficiently proved in line with the standard of proof against the appellant/accused person. In adverting to the merits of the appeal, I will test the grounds of appeal as submitted by the Counsel for the appellant starting with the 2nd ground which is to the effect that, the trial magistrate erred in law and in fact for convicting and sentencing the appellant basing on prosecution Exhibit P1 which was not read aloud in Court at the time of its admission, hence violated the principle articulated by the CAT in the case of **Robinson Mwanjisi & Others Vs. Republic** (supra).

Having scrutinized the entire records, it is evident on page 46 of the typed proceedings of the trial Court that, after the statement of transaction from Vodacom Tanzania Public Limited Company was admitted as an Exhibit P1, the same was not read over in Court. For the purpose of clarity, I find it pertinent to reproduce an extract of the proceedings hereunder: -

> ***"Court:*** *Records of the mobile money transfer from Vodacom of Suzan Milton Makawia with mobile No. 0766-062 790 is hereby admitted as Exhibit P1.*
>
> ***Sgd: Hon. R.P. Barabara, RM.***
>
> ***28/04/2022***
>
> ***Court:*** *PW3 proceeds .....I sent the money to the accused through my own number to his number..... That is all.*

*Sgd: Hon. R.P. Barabara, RM.*

*28/04/2022"*

From the above excerpt of the trial Court proceedings, I agree as correctly submitted by the Counsel for the appellant that, truly the contents of Exhibit P1 was not read out in Court to enable the appellant/accused person understand the contents, nature and substances of the facts contained in the order to make him informed and prepare his defence. It is trite law that, whenever it is intended to introduce any document in evidence, it should first be cleared for admission, and be actually admitted, before it can be read out. Otherwise, it is difficult for the Court to be seen not to have been influenced by the same. See the case of **Robinson Mwanjisi and Three Others Vs. Republic** (supra).

As far as my understanding of the current stance of law and practice is concerned, this is a serious procedural irregularity whose consequences has been deliberated by the Apex Court of our Land and this Court in numerous decisions upon being called to address the issue. For instance, in a recent case of **Matongo Chacha @ Mwita Vs. Republic (Criminal Appeal 528 of 2017) [2021] TZCA 386 (19 August 2021)** (Extracted from www.Tanzlii.org), the CAT held: -

> *"Once again, we agree with the learned State Attorney that the documentary exhibits tendered by PW4, that is the inventory and valuation forms, collectively admitted as Exhibit P2, were not read out after admission, to enable the*

*appellant appreciate their contents. That was against the settled principle in Robinson Mwanjisi (supra). See also the case of Emmanuel Kondrad Yosipati vs. Republic, Criminal Appeal No. 296 of 2017 (unreported). Therefore, those documents that were admitted collectively as Exhibit P2 are liable to be expunged, after which, the prosecution will have no evidence to prove the case against the appellant at the required standards."*

Similarly, in the case of **Festo Mgimwa Vs. Republic,** Criminal Appeal No. 378 of 2016 (unreported), the Court of appeal underlined that: -

*"On our part, firstly, we entirely agree that the contents of exhibit P1 was not made known to the appellant as it was not read over as required. We therefore, expunge the same from the record as prayed by Mr. Mwandalama. We wish however, to implore trial courts to always adhere to what the Court stated in ROBINSON MWANJIS AND THREE OTHERS V. THE REPUBLIC [2003] TLR 218, on the importance of reading over the contents of the document once it is cleared and admitted in evidence."*

Guided by the authorities cited above, the remedy for failure to read the contents of the document(s) (herein Exhibit P1) which was admitted in Court, is to expunge it from the Court records. **[See also the cases of Ntobangi**

**Kelya and Another Vs. the Republic,** Criminal Appeal No. 234 of 2015, **Mathias Dosela @ Adriano Kasana Vs. Republic,** Criminal Appeal No. 212 of 2019 HCT at Mwanza (unreported) and **Mbaga Julius Vs. The Republic,** Criminal Appeal No. 131 of 2015 (unreported).

With the above findings, and without much ado, I hereby expunge Exhibit P1 (Records of the mobile money transfer from Vodacom by Suzan Milton Makawia (PW3) with mobile No. 0766-062 790) from the Court record as the same is deficiency of evidential value.

Now, having expunged that crucial part of evidence from record, the next question is, whether or not the remaining evidence suffices to prove the appellant's case to the required standards. After painstakingly examining and weighing the remaining prosecution evidence, I am satisfied that the same are insufficient to secure conviction against the appellant on the offence he stands charged. I say so because, in absence of Exhibit P1, the testimonies of PW1, PW2, PW3 and PW4 respectively, in my considered view, cannot establish as well as secure conviction of the appellant, on a charge of obtaining money by way of false pretence from PW3 and PW4.

In the upshot, and for reasons stated hereinabove, it is my holding that, the present appeal is meritorious. Since the 2nd ground of appeal alone suffices to dispose of the appeal in its entirety, I find it unnecessary to dwell on testing the remaining grounds of appeal.

Consequently, I allow the appeal, quash the conviction of the appellant, Mwichande Haji @ Mndima and set aside the sentence of three (3) years imprisonment with an order for immediate release from prisons, unless he is being held for lawful cause.

**DATED** at **MOROGORO** this 14th day of December, 2023.

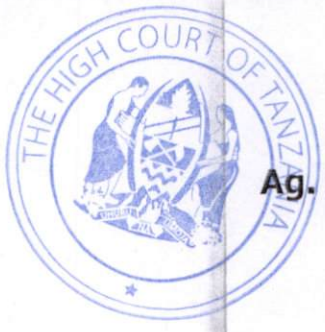
M. J. CHABA

**JUDGE**

**14/12/2023**

**Court:**

Judgment delivered under my hand and Seal of the Court in Chambers this 14th day of December, 2023 in the presence of Mr. Kabelwa, SA for the Respondent and in the absence of the Appellant.



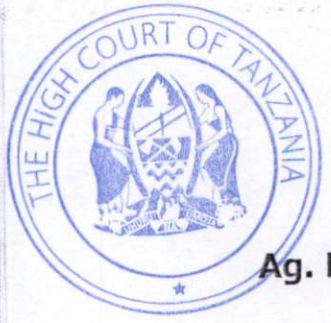
E.C. LUKUMAI

**Ag. DEPUTY REGISTRAR**

**14/12/2023**

**Court:**

Right of the parties to appeal to the CAT fully explained.




E.C. LUKUMAI

**Ag. DEPUTY REGISTRAR**

**14/12/2023**