IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB REGISTRY OF SHINYANGA

AT SHINYANGA

CRIMINAL APPEAL NO. 91 OF 2022

[*Originating from Criminal Case No. 129 of 2021 Shinyanga District Court*]

THE DPP ..... APPELLANT

Versus

MANG'OMBE MAIGE .....1ST RESPONDENT
NKOI NDOLILE.....2ND RESPONDENT
PETER PAULO KIFUTUMO.....3RD RESPONDENT
MANONI MANUALI.....4TH RESPONDENT
MALIMI HEPA.....5TH RESPONDENT
MAYALA JOHN .....6TH RESPONDENT
MANOTA CHARLES.....7TH RESPONDENT
KASHINJE KAPALE.....8TH RESPONDENT
MLEKWA MSHESHA.....9TH RESPONDENT
EMMANUEL CHARLES.....10TH RESPONDENT

JUDGMENT

Oct. 25th & Nov.10th, 2023

Morris, J

Fire is a good and friendly neighbour for cooking food but when misapplied hell befalls earth. On October 6th, 2018 three houses of Paul Kifutumo were set ablaze. This arsonous event happened at Mwenge Village, Shinyanga District and Region. Ultimately, this incident led to the arrest and prosecution of the denary respondents above at Shinyanga District Court (*the trial court*) under Criminal Case No. 129 of 2021.

The respondents were charged with arson contrary to section 319 (a) of ***the Penal Code***, Cap 16 R.E 2022 (*the Penal Code*). The trial court, however, found that this offence was not proved against them. Eventually, all respondents were acquitted. The DPP was disgruntled. He lodged this appeal on a sole ground that the trial court erred by acquitting the respondents while the prosecution proved the case beyond reasonable doubt.

On the day of hearing, it became apparent that the 9th respondent had passed on. Therefore, the matter abated against him. Further, Ms. Gloria Ikanda, learned advocate withdrew her representation in favour of the 5th respondent for lack of proper instructions.

The appellant was represented by Mr. Leonard Kiwango, Ms. Carolyne Mushi and Mr. Goodluck Saguya, all learned State Attorneys. The 1st, 2nd, 3rd, 4th, 6th, 7th 8th and 10th respondents enjoyed representation of Advocates Gloria Ikanda and Timotius Sulusi. For the appeal it was submitted by Mr. Kiwango that the case, at the trial court, was proved on the required standard. Thus, the said court wrongly acquitted the respondents. Citing page 6 of the judgement, he argued that undisputedly Mr. Kifutomo's houses were set on fire. But the trial court (at page 10 of

its judgement) reasoned that the prime doubt against the case rested on identification of who exactly burnt the houses. That is, whether the respondents were responsible for the alleged arson.

To the appellant, the victim (PW1) proved that there were misunderstandings between him and the other villagers. It was also argued that the prosecution proved how the village members were out casting the victim (pages 12-16 of proceedings). And that such differences led to the burning of PW1's houses. Mr. Kiwango submitted further that, PW2 (page 17 of proceedings) testified that on 6/10/2018 the respondents went to the victim's home and set his houses on fire.

To him, all respondents were identified by their names and their individual involvements in commission of the offence were made clear. That is, whereas the 1st, 2nd and 8th respondents were seen at the victim's residence with 5-litre gallons of petrol at around 11 hours; the 3rd respondent kicked open the victim's house door; the 6th respondent fetched therefrom various household items (including a mattress, motorcycle and crops); the 7th respondent went to and fetched from the kitchen a matchbox with which he lit fire on the items and houses after the 1st, 2nd and 8th respondents pouring petrol thereon.

It was argued further by the appellant that the rest of the respondents continued fetching items from PW1's house and setting them on fire as witnessed by PW3 whose evidence was also corroborated by PW4. Hence, to the appellant's attorney, the named prosecution witnesses directly saw the event. More so, they fully recognized the respondents. Thus, their evidence was both credible and reliable.

Moreover, it was submitted that, in law, recognition is more reliable than identification. Reference hereof was made to the case of ***Musa Saguda v R***, Crim. App. No. 440/2017 (unreported – page 17/18). The appellant stated further that prosecution witnesses knew the respondents because all of them resided in the same village. Owing to the fact that the incident took place during the daytime, the appellant submitted that there was adequate light to clearly identify the respondents. In addition, the respondents who were at the frontline in commission of the alleged crime were easily recognized for they were leaders in the village at that time; thus, well-known to the villagers on such basis. (especially the 1st respondent). It was also argued for the appeal that the 3rd respondent's identification was unmistakable because he is the victim's sons whose recognition by both his mother and siblings was obvious.

Furthermore, according to the State Attorney, evidence by PW2, PW3 and PW4 indicate that the *trio* mentioned all the respondents to PW1 (victim) immediately on the latter's arrival. He echoed the legal principle that, early-naming of the respondents by witnesses conjectures that the subject respondents were properly identified and/or recognized. He had ***Trazias Evarista @ Deusidedit Aron v R***, Crim. Appl. No. 188/2020 (unreported) as authority hereof. To the State Attorney, the doubt recorded by the trial court regarding identification of the respondents was, thus, untenable.

In addition, the appellant submitted that, in deciding the case in the respondents' favour, the trial court relied on evidence by PW5 and PW6 which bore contradictions with of testimonies of PW1 - PW4. The contradiction was that when PW5 and PW6 arrived and interrogated PW4, the latter stated that the perpetrators were very many such that she (PW4) did not identify them. However, in view of Mr. Kiwango, PW4's testimony (page 23 of proceedings) is to the effect that she personally saw the respondents burning the subject houses and households. Thus, so long as PW5 and PW6 did not witness the incident but were only told by PW4; their evidence was not only hearsay but also weaker than that

of PW4 (eye-witness). So, to the appellant, the trial court should have accorded more weight on the evidence by the latter than otherwise.

Further, the State Attorney appreciated that the incident was carried on by a mob of villagers as found by the subordinate court. However, he argued that per the evidence by PW2-PW4; specific actors were stated as being the respondents. ***Bomboo Anna & Another v R***, Crim. App. No. 320/2016 (unreported; page 16) was cited to reaffirm the principle that where, in a crime committed by the mob, a section therefrom is clearly singled out as being responsible for the commission of said offence; such identification or recognition suffices to hold the identified individuals liable.

In line with the foregoing, the appellant argued that in this case PW2-PW4 clearly mentioned the respondents and stated how each of them participated in the arson. The said witnesses (PW2-PW4) also revealed that the villagers did not offer any help because of the disputes between the victim (PW1) and the leadership of the village.

Consequently, the learned State Attorney prayed for the lower court's decision to be quashed; the respondents to be held guilty accordingly; and the appropriate sentence to be given to the convicts.

In reply, Ms. Gloria opposed the appeal. She submitted that the prosecution paraded 6 witnesses. Out of them, PW1 was not present but was merely told by his wife (PW4) that the responsible people were the ones who previously invaded the victim (ie. 2nd, 3rd and 8th respondents). However, such invasion was not reported anywhere. Further, PW1 and PW4 never stated that on the alleged (previous) event the 2nd, 3rd and 8th respondent were fully identified or involved in the invasion. PW1, thus, wrongly perceived and deducted that the perpetrators were the ones who had invaded him on 31/1/2018. To the respondents, PW1 and PW4 did not create the link between the present crime and the alleged previous invasion so as to create a plexus of how the 1st, 4th, 5th, 6th, 7th, 9th and 10th respondent were also involved in both (previous and current) incidences.

Ms. Ikanda also submitted that, PW4 must have created/established the association of all respondents to the crime a and each respondent's participation. She argued that, in ***Sadick Hamis @Rushikano and 2 Others v R***, Crim. App. No. 381 CF 383/2017 (unreported; at page 16) it was held that a witness must explain how he identified the respondents and how each respondent participated in commission of the alleged crime.

According to her, PW4 (page 23 of proceedings) mentioned 8 people-respondents instead of 10. Hence, such witness' identification was incomplete.

She, as well, stated that PW2-PW4's evidence was full of contradictions. For instance, at page 17, PW2 states that he saw the 6th respondent going to the kitchen to light the fire but PW3 testified that he saw the same 6th respondent fetching the items from the house and setting them on fire. In addition, whereas PW2 testified that all respondents were responsible to collect the items and burning them while stealing some; PW3 (page 19 of proceedings) averred that some items were taken out and others left inside. That is, all items were burnt. To the respondents, thus, the prosecution witnesses did not clearly identify each of the respondent and how he took part in the commission of the crime.

In addition, Advocate Ikanda argued that PW2, PW3 and PW4 were at variance as to who offered assistance to the victim. That is, PW2 testified that some neighbors offered help (page 19 of proceedings) but PW4 (page 23) stated that no help came by. Further, PW3 mentioned that PW5 and PW6 visited the crime scene while PW4 did not support such tale but stated that it was only her husband (PW1) who came to the location.

In totally, the respondents argued that prosecution witnesses indicated that there more than 10 people on that particular day; and that the police did not attend the incident as they feared the mob attack (per PW1 at page 12). Hence, identification was inconclusive. Further, Ms. Ikanda stated that PW1 incriminated the respondents out of hatred and misunderstanding between them. Also, to her, although the incident took place during daytime (enough light); all prosecution witnesses did not adequately identify the respondents and failed to establish how each participated in the crime. Regarding the contradictions by PW5 and PW6, the respondents' counsel submitted that the appellant had a duty to prove the case basing upon clear and credible witnesses. To her, PW5 an PW6 were leaders of the village (Village Executive Officer and Ward Counselor respectively), thus, reliable witnesses.

Mr. Sulusi submitted that the Court of Appeal recapitulated factors that differentiate recognition and identification. That is: light, distance, time spent by the perpetrator and the acquaintance of the victim to the respondent. To him, the case cited by the appellant (***Saguda's case*** *supra*) involved rape not arson. Hence, recognition becomes easy according to circumstances of the crime (rape) as opposed to the present

case. In this case, according to Advocate Sulusi, the appellant only stated two factors thereof. That is, the respondents are fellow villagers with victim. So, they were known to witnesses. Also, the weight was given on the light (daytime). But the appellant did not prove the distance between witnesses and respondents. Too, he did not link such distance with how each respondent participated in the arson; and the time spent by respondents for the witnesses to clearly identify each of them with a particular role/task he was alleged to perform. More so, now that it was evident that the incident was carried on by the mob of villagers. To Mr. Sulusi, the cited (***Saguda*** *-supra*) is distinguishable to this matter and that the appeal should be dismissed for want of merit.

In rejoinder, it was submitted that PW4 named the respondents to PW1 at the earliest. Also, the former established the link between two events (31.1.2018 and 6.10.2018) by starting that it was the same people who were responsible for both incidences. The appellant recapitulated that PW2-PW4 consistently proved the respondents' identity and how each respondent took part in the offence. The appellant, thus, reiterated that this appeal is pregnant of merits.

With dispassion, I have considered the submissions of parties. The prime question to be determined is whether the charge against the respondents was proved beyond reasonable doubt. To achieve this objective and found if the prosecution satisfactorily established the respondents' guilt; the Court will re-evaluate the evidence on record. The evidence re-appraisal approach is adopted on the basis of this being the first appeal. See, for instance ***Mussa Jumanne Mtandika v Republic***, Criminal Appeal No. 349 of 2018; ***Kaimu Said v Republic***, Criminal Appeal No. 391 of 2019; and ***David Livingstone Simkwai and 8 Others v Republic***, Criminal Appeal No. 146 of 2016 (all unreported).

As shown above, the trial court found that the charge was not proved. It reasoned that there was no proper identification of the respondents as perpetrators; and that the prosecution evidence was full of contradictions. However, Mr. Kiwango is of the view that the respondents were clearly identified and mentioned by their respective names by PW2, PW3 and PW4. To him, as the incidence occurred during the day time; the respondents were known to the *trio* witnesses; the 1st respondent was the village leader; and the 3rd respondent was son of PW1 and PW4, the respondents were not identified but rather recognized.

However, according to Ms. Gloria, the evidence of PW1 was hearsay; the 2nd, 3rd and 8th respondents were not fully identified in the alleged incidence of 31/1/2018; and the other respondents were not involved in that previous incidence. Further, she argued that the evidence of prosecution was contradictory in various aspects: **One**, PW2 testified that the 6th respondent ignited the fire whereas PW3 testified that the 6th respondent fetched items from the house and set them on fire. **Two**, PW2 stated that all respondents were responsible to collect the items and burn them and retaining others but PW3 testified that some household items were taken out while others were left inside.

Three, PW2 testified that neighbours came to help while PW4 said no one offered help. **Four**, PW3 testified that PW5 and PW6 visited the crime scene while PW4 did not support such version. Further, the respondents contended that their purported identification by the witnesses was not clear on the basis of distance, extent of light, and the time spent under observation. To them, PW1 incriminated all the respondents above out of long-term hatred and misunderstandings he held against the majority of villagers.

Axiomatic in criminal justice system is the adage that, even a hundred suspicions do not add up to proof. Hence, the accused should only be convicted on the strength of prosecution case. See, hereof, ***John Makolobela and 2 Others v R*** [2002] TLR 296; ***Twinogone Mwambela v R***, Criminal Appeal 388 of 2018; ***Hassan Singano @ Kang'ombe v R***, Criminal Appeal No. 57 of 2022; and ***Paschal Yoya @Maganga v R***, Criminal Appeal No. 248 of 2017 (all unreported, except the first one).

In line with the foregoing principle, therefore, I will first consider the evidence that was marshalled by the prosecution against every respondent in order to determine whether he was clearly identified or recognized. Undisputed, per the evidence on record, is the fact that all respondents were acquainted to PW2-PW4. The 1st respondent was not only a sub-village chairman but also PW1's neighbour (page 18 of proceedings has PW2's testimony in this regard). Further, PW3 testified (page 20) that after the incident, PW2 and PW3 ran to police station because the sub-village chairman (1st respondent) was among the mob. Also, PW4 testified to the effect that all people involved in the arson were her neighbors (page 23). Furthermore, the said witnesses named the

respondents by their names, including the 1st respondent (pages 17, 19 and 23 of the proceedings).

The 2nd respondent was recognized by PW2 and PW4. Both testified that the subject respondent carried with him a five-litre gallon full of petrol (pages 17 and 23). Specifically, PW2 testified to had seen the respondent clearly (page 18); and PW3 testified (page 20) that the 2nd respondent lived at the neighboring street. The 3rd respondent is PW1's son and part of the victim's family. Therefore, his recognition to the subject witnesses was unquestionable and as clear as crystal.

Furthermore, the 4th respondent was named by all PW2-PW4. He never cross examined PW2. In law, failure or neglect to controvert a fact alleged by a witness; through cross examination, amounts to accepting such fact. Thus, the 4th respondent's adamance hereof formed his inherent acceptance that he had been identified/recognized by PW2. In addition, PW3 testified (page 21) that the subject 4th respondent was a neighbour whose house was very close to victim's house. The 5th respondent was also recognized. At page 21 of the proceedings, PW3 testified that the former lived in a nearby street at the same sub-village.

Likewise, PW4 corroborated such position (page 24) that the 5th respondent's house was also very close to their house.

On the part of the 6th respondent; PW2-PW4 not only mentioned him but also, they testified that he ignited the fire (pages 17, 19 and 23). The 7th respondent was also recognized by PW2 who testified that she saw him (7th respondent) taking the mattress (page 19) out of the house. In addition, PW4 testified that she saw him collecting the household properties ready for burning them (page 25). In addition, the 8th respondent was recognized by PW2 - PW4. The three witnesses were resolute that this respondent was also carrying a gallon of petrol. Further, PW4 testified that when she tried to salvage her property from being destroyed by fire, it was the 8th respondent who pushed and prevented her from retrieve her properties (page 25).

Recognition of the 10th respondent was also proved by PW4 (page 25). The latter testified that the said respondent used to go to the victim's house to help with some chores. Therefore, he was a person well known to the victim's family. Further, the evidence that the respondents were well known to the victim's family was unchallenged by the respondents. The prosecution evidence was certain and un-contradictory as to

recognition of the respondents. Without sounding inelegant, the effect thereof is that the respondents noted the truthfulness of such testimonies.

In law, as correctly argued by the appellant's attorney, recognition is more reliable than identification. See, for instance, the cases of ***DPP v Daniel Wasonga***, Crim. Application No. 64 of 2018; ***Byamtonzi John @Buyoya and Another v Republic***, Crim. Appeal No. 289 of 2019; ***Mussa Saguda v Republic***, Crim. Appeal No 440 of 2017; and ***Tulizo Kahulo v Republic***, Crim. Appeal No. 338 of 2017 (all unreported).

The above analysis in perspective, therefore, the Court holds that in the present case the question as to mistaken identification is immaterial or does not arise considering the fact that the crime was committed during day time. The first limb of the sole ground of appeal is accordingly determined.

I now turn to the second branch of the ground of appeal. It was the submissions for the respondents that there were blatant contradictions in the prosecution witnesses' testimonies. According to them, prosecution witnesses were inconsistent regarding the role played by each respondent in the alleged crime. It was argued further that taking into account the charged moment and traumatic incident to them, it is unlikely that the

victims/witnesses remembered exactly the role of every respondent in commission of the offence.

I am mindful of the rationale of the court according more weight to consistent evidence. Nonetheless, I am not naïve to the reality that at the spur of the inferno moment discrepancies can be avoided completely. In my view, the highlighted incongruities by the respondents herein can be safely excepted. Let me expound this aspect a little bit more. **Firstly**, the offence allegedly committed by the respondents is arson. It is obvious that for three houses of the victim and domestic items therein to be set on fire at the same time required a concert of many people. Thus, it is unlikely that each respondent was doing one particular role in total exclusion of the other chores.

Secondly, the witnesses who were victim's family members would not be expected to had just sat there and relaxed to ascertain the role performed by each respondent. They were not coordinators of the process nor were they tallying officers, so to speak. **Thirdly**, whether some items were stolen by the perpetrators or not, on the one hand; or all household items or a few ones were taken out of the houses before being set on fire, on the other, are inconsistencies which do not significantly undermine the

prosecution's case. All that matters hereof was the proof of the victim's houses being set aflame; not stealing or attempted stealing. **Fourthly**, in the undisputed pack of evidence that PW1's houses were burnt to ashes, it would beat logic to otherwise find strengths in the argument that witnesses did not name a common source of fire or the location from where it was first lit. **Fifthly**, between the direct evidence of PW4 and the hearsay one by both PW5 and PW6 regarding identification of the respondents; the former carries the day. It is law. Hearsay evidence is largely inadmissible.

Sixthly, in law, minor contradictions in evidence which do not significantly affect the remaining evidence on record ought to be ignored. Hereof, I seek guidance from the sound holding of the Court of Appeal in the case of ***DPP v Daniel Mwasonga***, Criminal Appeal No. 64 of 2018 (unreported).

Seventhly, it is a settled principle of law in our jurisdiction that, the criminal case should be proved **beyond reasonable doubt** not **beyond every doubt**. That is, this duty is dischargeable when no reasonable doubt is cast on the prosecution's case. Use of the term 'reasonable' in this nomenclature is not without value. Courts are left with

some form of flexibility while assessing the evidence on case-to-case basis. Hence, each case would be determined on own merits given unique circumstances of the crime for which an accused is being prosecuted.

In the case of ***Miller v Minister of Pensions*** [1972]2 All ER 372, it was held that proof beyond reasonable doubt does not mean proof beyond every shadow of doubt. That is, the law would fail to protect the community if it admitted fanciful probabilities of possibilities to deflect the course of justice. See also, the case of ***Mychel Andriano Takahindengeng v R***, Criminal Appeal No. 76 of 2020 (unreported).

Eighthly, all respondents purported to rely on the defence of *alibi.* The 1st respondent alleged that on the fateful day he was in the farm until 13:00hrs. The 2nd respondent testified that he had been at the auction. The 3rd respondent said he was at Magu village until 21:00hrs. The 4th respondent claimed that he was at Misungwi-Mwanza. The 5th respondent denied being around the locality because he was grazing cattle until 19:00hrs. Further, the 6th respondent stated that he had been at auction centre until 21:00hrs; whereas the 7th respondent testified that he was at Geita. The 8th and 10th respondents testified that they were at Msalala - Nyarubere village and Ntambalale village respectively.

The defence of *alibi* is governed by section 194 (4) (5) and (6) of the **Criminal Procedure Act**, Cap 20 R.E 2022 (***the Act***) The subject section reads as;

> *(4) Where an accused person intends to rely upon an alibi in his defence,* ***he shall give to the court and the prosecution notice of his intention to rely on such defence before the hearing of the case.***
>
> *(5) Where an accused person does not give notice of his intention to rely on the defence of alibi before the hearing of the case,* ***he shall furnish the prosecution with the particulars of the alibi at any time before the case for the prosecution is closed****.*
>
> *(6) Where the accused person raises a defence of alibi without having first furnished the prosecution pursuant to this section, the court may, in its discretion, accord no weight of any kind to the defence* (bolding rendered for emphasis)*.*

Pursuant to the foregoing provision, therefore, the respondents were duty bound to give notice or particulars of the subject defence to the court and prosecution. The said notice/particulars should have been given before hearing/before closure of prosecution case, as circumstances would dictate. The obvious rationale behind such step is to give the prosecution the chance of disproving the respondent's alibi as they

discharge their burden of proving the guiltiness of the respondent beyond reasonable doubt. Otherwise, if no such notice/details are given, such defence will amount to being an afterthought.

In Kibale v Uganda [1999] 1 EA 148 it was underscored that, a "genuine *alibi* is, of course, expected to be revealed to the police investigating the case or to the prosecution before trial". Thereafter, the police or prosecution would verify such defence. That is, the genuineness of *alibi* is determinable by its being disclosed at the outset. See also, ***Masanja Lupilya v R***, Criminal Appeal No. 444 of 2017; ***Masamba Musiba @Musiba Masai Masamba v R***, Criminal Appeal No. 138 of 2019; and ***Hamis Bakari Lambani v R***, Criminal Appeal No. 108 of 2012 (all unreported).

Having traversed the record of trial court, it is evident to me that the respondents neither gave notice of the intended *alibi* before hearing nor did they notify the prosecution with particulars thereof before the latter closed its case. Therefore, to consider this defence at this stage, in my view, is equivalent to condemning the respondent unheard in such regard.

Having answered the parties' contentions as to whether the case was proved beyond reasonable doubt, I feel inclined to further consider whether ingredients of the offence were proved. As indicated earlier, the respondents were charged under section 319 (b) of ***the Penal Code***. This provision reads;

> *"319. Any person who willfully and unlawfully sets fire to-*
> *(a) any building or structure whatever, whether completed or not;*
> *(b) N/A*
> *(c) N/A*
> *is guilty of an offence and is liable to thirty years imprisonment.*

Therefore, the prosecution should prove that there was fire set by the accused person; the accused person set the fire deliberately and unlawfully; and the same was set to a building or structure. See, for instance, ***Emmanuel Chigoji v Republic***, CoA Criminal Appeal No. 355 of 2018; and ***Sarapion Babanzi and 2 Others v Republic***, HC Criminal Appeal No. 21 of 2021 (both unreported).

In the case at hand, there is no dispute that the three houses of PW1 were set on fire. Prosecution evidence and that of respondents to that effect harmoniously marry up. It was further the evidence of the

PW2-PW4 that the 6th respondent ignited fire using the match box (pages 17, 19 and 23 of the proceedings). It was further proved by prosecution that the rest of the respondents actively participated. The 1st, 2nd and 8th respondents came with gallons of petrol. The 3rd respondent smashed the door and removed the motorcycle.

The rest were in conjunction removing the properties and setting them on fire. Therefore, it was fully established the fact that the respondents formed a common intention to commit the offence pursuant to section 23 of ***the Penal Code***.

It was further proved that the respondents committed the offence willfully and unlawfully. When they arrived at the victim's house; PW2 testified at page 17 that; "Our mother asked them what was wrong. They said they come (sic) to destroy the family and all properties…" In the case of ***Emmanuel Chigoji*** (*supra*) the court relied at what was stated by Samuel L. Stevens - a prominent writer from Jacksonville, Florida in the Article titled: ***Samuel L. Stevens, Evidence of Arson and Its Legal Aspects***, 44J. Crim. L. Criminology & Police Sci. 817 (1953-1954) that:

> *"**All preparations and acts of accused within a reasonable time prior to fire can be used to indicate the circumstances of guilty**. This prior conduct and preparations*

must of course be relative to the fire. For instance, preparation made to cause or spread the fire may be proved....That shortly before the fire he(accused) secured matches or other means of starting a fire... "(emphasis added).

In this case, the accused persons went with gallons of petrol: ready and armed to set fire to the victim's houses.

Taking all factors above in the perspective; I have to, as I hereby do, arrive at the conclusion that the prosecution proved the case beyond reasonable doubt. Consequently, I quash the trial court's findings regarding the innocence of the respondents. In its stead thereof, therefore, this Court finds them guilty and convicts the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th 8th and 10th respondents for the offence of arson contrary to section 319 (a) of ***the Penal Code***.

In the upshot, the appeal stands allowed to the extent explained above. It is so ordered.

C.K.K. Morris
Judge
November 10th, 2023

SENTENCE

The offence for which the convicts were charged and are now convicted for is a serious inhuman crime. It was also committed on three houses of one family leaving it with no suitable means of survival. More so, food, shelter and some other amenities of life were curtailed/put to direct stop by the arson for this victim-family. As the commission of this crime also involved leaders of the village; who should have otherwise prevented/mitigated the disputes of villagers; this court is inclined to find that the convicts-respondents deserve a stern punishment to serve as deterrence of crime in the civilized society.

The punishment for this offence is up to thirty (30) years' imprisonment. Having considered both aggravating and mitigating factors, this Court hereby sentences the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 10th respondents-convicts to a term of twelve (12) years in prison.

THE HIGH COURT OF TANZANIA

C.K.K. Morris

Judge

November 10th, 2023

Court:

The right of appeal to the Court of Appeal is explained to parties.

C.K.K. Morris

Judge

November 10th, 2023