IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MTWARA

AT MTWARA

CRIMINAL APPEAL NO. 8627 OF 2024

(Originating from the District Court of Mtwara at Mtwara, in Criminal Case No. 2/2023)

ISSA IBRAHIMU MTAKOMA ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

10th June, & 26th June, 2024

MPAZE, J.:

Issa Ibrahim Makoma the appellant herein was arraigned before the District Court of Mtwara for an offence of Rape contrary to sections 130(1) (2) (e) and 131 of the Penal Code [Cap 16 R.E 2022], it was alleged that between August to October 2022 at Ligula area within the District and Region of Mtwara Issa Ibrahim Mtakoma did have carnal knowledge with the victim (name hidden for protection of her identity) a girl aged fifteen (15) years old.

The particulars of the offence were read over and explained to the appellant who pleaded not guilty to the charge. In a bid to prove their

case, the prosecution paraded a total of four witnesses Siti Ismail Bandari (PW1), Edwin George Manyama (PW2) who also tendered a PF3 which was admitted as Exhibit P1, Rashid Abdallah Chande (PW3) tendered School Admission Register page and Standard Four National Assessment which were admitted as Exhibits P1 and P2 respectively and the victim (PW4).

On his part, the appellant fended himself. After the trial court finalized the hearing of both sides prepared a judgement which found the appellant guilty of the offence stand charged, it proceeded to convict him and sentenced him to 30 years imprisonment.

Dissatisfied with the conviction and sentence the appellant has appealed to this court raising two grounds of appeal which are;

1. The trial court erred in law and fact by convicting and sentencing the appellant while the prosecution failed to prove their case beyond a reasonable doubt.
2. The trial court erred in law and fact by proceeding with the matter without reminding the charge of the appellant.

Before proceeding with the analysis of the grounds of appeal, I find it appropriate to first provide a summary of the facts of the case, which are as follows;

The victim was working as a house girl for PW1. It was stated that one day, PW1 received information from Catherine, who was also her house girl, that the victim used to jump the wall and leave the premises at night.

It was alleged that upon receiving this information, PW1 started investigating who exactly was taking the victim away. She was able to learn from neighbours about the person involved. PW1 decided to communicate with the brother of the said person, but this did not help as the victim's behaviour continued. Therefore, PW1 decided to seek assistance from a policeman to resolve the situation.

PW1 stated that the policeman managed to arrange a meeting with the appellant, the appellant's brother, the victim, and the person who had found the job for the victim to PW1. It was said that when the victim was asked if she knew the appellant, she first denied it but later admitted to having a sexual relationship with him. Following this, they all went to the police station except for the appellant's brother.

After the matter was reported to the police station, they proceeded to Likombe Health Centre, where the victim was examined and found to be about three weeks pregnant. PW1 stated that she then decided to return the victim to her home, where she continued to see the victim at

the house where the appellant lived. PW1 said that at the time the victim was found pregnant, she was 17 years old.

PW2, a medical doctor, examined the victim on 21st October, 2022. He stated that after the examination, he realized the victim had been having sexual intercourse and also discovered she was pregnant. After the examination, he filled out the PF3, which was admitted as Exhibit P1.

PW3 is a teacher at Moma Primary School, where the victim was a student. He explained how the victim was a student at this school and had dropped out while in Standard Four. He also provided the School Admission Register page and the Standard Four National Assessment, which were admitted as Exhibits P2 and P3 respectively.

On her part, PW4 (the victim) stated that she had been in a sexual relationship with the appellant several times until she became pregnant. She further asserted that she consented to the sexual intercourse and did not believe the appellant had done anything wrong. She requested the trial court to acquit the appellant.

In his defence, the accused denied the offence and also claimed not to know the victim.

During the hearing of the appeal, the Republic was represented by Ms. Florence Mbamba, a learned state attorney who strongly opposed the appeal. The appellant was represented by Mr. Ahyadu Nanyohe the

learned Advocate, who supported the appeal and urged this court to agree with him and set the appellant free.

Supporting the appeal, Mr. Ahyadu began by reminding the court of the duty of the first appellate court, which is to reevaluate the evidence on record through careful examination and, if necessary, arrive at its own decision. To support this position, he referred the court to the case of **Mustin Kombo v. R**, Criminal Appeal No. 84 of 2016 CAT, which was cited with approval in the case of **D. R. Pandya v. R** (1957) EA 336.

After outlining the legal position regarding the duty of the first appellate court, he continued to argue that upon careful exercise of this duty, the court would find that the trial court erroneously convicted the appellant of an offence that was not proven beyond a reasonable doubt.

Mr. Ahyadu argued that the prosecution must prove its case beyond a reasonable doubt, citing section 3(2)(a) of the Tanzania Evidence Act, [Cap 6 R.E 2022] herein after 'the TEA', and the case of **Jonas Nkize v. R** [1992] TLR 213. He stressed that for the prosecution to prove its case, all doubts must be cleared, particularly emphasizing the pivotal role of the victim as the material witness, citing the case of **Selemani Makumba v. R** [2016] TLR 379.

Mr. Ahyadu further explained that for the evidence of the material witness, who is the victim in this case, to be considered in finding the

accused guilty, proper procedures for taking and recording her evidence must be followed. He detailed the procedures for taking evidence from witnesses, as specified in section 198(1) of the Criminal Procedure Act, [Cap 20 R.E 2022] 'the CPA', and highlighted that for a child of tender age witness, their evidence must be taken under section 127(2) of the Tanzania Evidence Act.

Mr. Ahyadu stated that if evidence is taken and recorded in violation of these two provisions, such evidence should be discarded. Mr. Ahyadu submitted further that the victim in the current case was 17 years old at the time she appeared in court to give her testimony as PW4. He argued that despite her testimony being taken, the procedure of taking her testimony was not followed.

The counsel pointed out that while the witness was 17 years old, her evidence was taken under section 127(2) of the TEA where she promised to tell the truth. He contended that as PW4 was an adult, her evidence should have been taken under section 198(1) of the CPA. The counsel argued that the failure to have PW4 take an oath as per section 198(1) renders her testimony inadmissible, and thus, it should be expunged from the record.

He supported this argument by citing the case of **Duwa Abdallah Ngoi @ Maniwaya v. R**, Criminal Appeal No. 493 of 2022 HC Dar

(unreported). The counsel also referred to another case which discusses the procedure for taking oaths the case of **Jafari Ramadhani v. R**, Criminal Appeal No. 311 of 2017, page 8, He emphasized that it is not sufficient for a witness to simply state she was a Christian; rather, the requirements of section 198(1) and 8 of the Oaths and Statutory Declarations Act [Cap 34 R.E. 2002], must be strictly adhered to.

Based on his submission, Mr. Ahyadu prayed that PW4's evidence be expunged from the record. He argued that if PW4's evidence were expunged, there would be no other evidence capable of proving the offence against the appellant beyond all reasonable doubt.

Mr. Ahyadu further argued that PW1's evidence constituted hearsay and did not prove the offence of rape against the appellant at all. He referred the court to the case of **Haji Ibrahim v. R** (1975) LRT 56, which held that hearsay evidence is inadmissible.

Moving on to the second ground of appeal, Mr. Ahyadu, the advocate for the appellant, argued that the law is explicit that once the accused is brought before the court, they must first be informed of the charge to understand the offence they are accused of. Furthermore, the court is obligated to repeat this process before the case is heard. According to the counsel's opinion, failure to do so renders the proceedings null and void.

To support this argument, he cited the cases of **R v. Bahati Sanga**, Criminal Appeal No. 56 of 2016, **Cheko Yahya v. R**, Criminal Appeal No. 167 of 2013, and **Jafari Ramadhani** (supra), pages 4-5, he said in these cases the proceedings were nullified due to the court's failure to read the charge before commencing the hearing.

Mr. Ahyadu claimed that upon examining the proceedings, it appears that this case was transferred from C.J Davidi SRM to L.M Jagandu SRM. Therefore, in light of this situation, he believed that although the appellant was informed about this transfer, the charge against the appellant should have been read to him again before the commencement of the hearing, which was not done.

Based on all the submissions made by the appellant's counsel, he prayed to the court that the appeal be allowed, and the proceedings and judgment of the trial court be quashed, resulting in the appellant's release.

In response to the submissions made by the appellant's advocate, Ms. Florence, the State Attorney, opposed the appeal. She argued that the prosecution had managed to prove their case beyond reasonable doubt.

She explained that in the offence the appellant was charged with, which is rape, there are specific elements that must be proven, as stated

in the case of **Daktari Jumanne v. R**, Criminal Appeal No. 602 of 2021, are age, penetration and the involvement of the accused person, Ms. Florence asserted that all these elements had been proven.

Starting with penetration, Ms. Florence stated that this element was proven by PW4 herself, who explained her relationship with the appellant that led to the birth of their child named Balmark. She said that after this testimony, the appellant did not cross-examine PW4, suggesting that the appellant agreed with what PW4 had stated. Ms. Florence cited the case of **Nyerere Nyague v. R**, Criminal Appeal No. 67 of 2010, reported in Tanzlii, to support her argument.

Regarding the age of the victim, the State Attorney argued that PW4 herself provided evidence confirming her age. PW3 also tendered an admission register book showing that the victim was enrolled in Standard One in the year 2015. Ms. Florence alleged that with this evidence, the victim's age was proven.

On the issue of the appellant's involvement, the State Attorney argued that this too was proven. She pointed out that even on page 10 of the judgment, the trial magistrate noted that the appellant first denied knowing the victim but later admitted during cross-examination that he had a child named Balmark with her. Ms. Florence concluded that this evidence proved the appellant's involvement.

Ms. Florence further argued that all other prosecution witnesses corroborated PW4's testimony. Therefore, she maintained that the prosecution had successfully proven their case beyond a reasonable doubt.

Concerning the failure to comply with section 198(1) of the CPA, the State Attorney argued that any such non-compliance can be cured by section 388 of the CPA, as it did not prejudice the accused in any way. She pointed out that PW4 could promise to tell the truth despite being an adult witness.

However, the State Attorney went on to argue that even if the court expunged PW4's evidence, there would still be sufficient evidence to prove the offence of rape against the appellant. She asked the court not to be bound by the case of **Duwa Abdallah Ngoi**, as the same is true of this court.

Regarding the second ground of appeal, Ms Florence submitted that when the appellant was brought to court, the charge was read and explained to him, and he denied committing the offence. She added that during the preliminary hearing, the charge was again read to the appellant. She stated that this was sufficient and that there was no need to read it again during the hearing.

Ms. Florence referred the court to the case of **Kubezya John v R**, Criminal Appeal No. 488 of 2015 CAT, reported in Tanzlii, where the Court of Appeal stated that the court is not obligated to remind the accused of the charge during the hearing. If the appellant wanted the charge to be reminded of him, he should have requested the court to do so.

Ms. Florence contested Mr. Ahyadu's submission that the change of magistrate necessitated the charge being read again to the appellant. The State Attorney argued that this submission is incorrect, as the requirements for reading the charge to the accused are stipulated in section 228 of the CPA, which she claimed had been complied with.

Ms. Florence, the State Attorney, further argued that ultimately, the appellant understood the charge against him, which enabled him to mount a defence. For these reasons, she prayed that the court dismiss the appeal and uphold the decision of the trial court.

In his rejoinder, counsel for the appellant reiterated his earlier submissions, maintaining that the prosecution failed to prove their case beyond reasonable doubt. He emphasized that PW4's evidence, taken contrary to section 198(1) of the Criminal Procedure Act (CPA), cannot be cured by section 388 of the CPA.

Mr. Ahyadu stressed that if PW4's evidence were expunged, there would be no remaining evidence to incriminate the appellant. He argued

that even the issue of the victim's age had not been proven. He contended that proof of age could have been established through evidence from the victim's parents, a birth certificate, or a medical doctor's report.

About the appellant's admission in his defence that he had a child with PW4 and his failure to cross-examine PW4, Mr Ahyadu argued that the appellant should not be found guilty and convicted based on his weak defence, but rather on the strength of the prosecution's case.

With these submissions, he continued to strongly pray for the court to allow the appeal.

Upon thoroughly examining the submission from both sides in deciding this appeal, I will start with the second ground of appeal where the appellant has faulted the trial court for failure to read over and explain to him a charge before the commencement of the hearing.

Supporting this ground the appellant's advocate was of the view that before the commencement of the hearing, the charge sheet should have been read again to the accused person.

He referred to cases such as **Jafari Ramadhani v. R**, Criminal Appeal No. 311 of 2017, **Cheko Yahya v. R**, Criminal Appeal No. 167 of 2013, and **R v. Bahati Sanga @ Ndeti**, Criminal Appeal No. 54 of 2016.

On the other hand, the State Attorney argues that this was not fatal because the charge was read to the appellant when he first appeared in

court, and it was also read during the preliminary hearing. Therefore, according to the State Attorney, if the appellant wanted a reminder, he should have requested it from the court. She supported her argument by citing the case of **Kubezya John v. R**, Criminal Appeal No. 488 of 2015.

I have read the decisions of all the cases referred to me by the parties in respect of this ground. The cases cited by Mr. Ahyadu, Advocate, support the position that reading out the charge to the accused person before the trial commences is mandatory and failure to do so is a fatal irregularity with the effect of vitiating the proceedings. However, the case cited by Ms. Florence, the State Attorney, presents a different view, stating that the trial court is not legally obligated to read over the charge again before the commencement of the trial.

The cited decisions provide for two schools of thought regarding this issue. It has been a settled position that, in situations where there are conflicting decisions of equal weight, various decisions of the Court of Appeal have stated that the best practice is to follow the more recent of the conflicting decisions. See **Arcopar (O.M) S.A v. Harbert Marwa & Family & 3 Others**, Civil Application No. 94 OF 2013, **Geita Gold Mining Ltd v. Jumanne Mtafuni**, Civil Application No. 30 of 2019

For this reason, in addition to the cases referred to me by the parties, I have encountered another case which I consider more recent

than the ones cited by the parties and which I will follow in this matter. This case was decided by the Court of Appeal in September 2023, namely, **Umaiya Makilagi & 2 Others v. R**, Criminal Appeal No 371 of 2020. The Court of Appeal, when confronted with a similar issue, had this to say;

> *'Legally speaking, the duty to read or remind the charge to the accused arises when a fresh charge is lodged in court in terms of section 228 of the CPA or when a charge is amended or altered by adding or removing an accused from the charge, a count in the charge sheet is withdrawn or when there is variance between the charge and evidence Page 12 of 15 (see section 234 of the CPA) or when a trial court complies with an order of retrial made by a superior court and the case is scheduled to recommence the trial...it* ***is not a legal requirement that a trial magistrate has to read again or remind the accused the charge when the case commences hearing*** *even if time had lapsed from when the accused persons were first arraigned...'* ***failure to do so is not fatal*** *and cannot displace the fact that the requirement of the law was duly complied with on 14/4/2016.* ***As a way of emphasis, the provisions of section 228 of the CPA come into play when an accused is first arraigned in court whereby a presiding***

magistrate is enjoined to ensure that the charge is read over to an accused person so as to appraise him of the accusations levelled against him.'[Emphasis Added]

In line with this stance and given that the trial court records indicate that when the appellant first appeared in court on 4th January 2023 he was informed of the charges, and during the preliminary hearing on 1st March 2023 the charge was again read over and explained to him, I find that there was no need to read the charge again as the requirements of section 228 of the CPA was already complied with. Therefore, I find the second ground of appeal to be without merit.

Before addressing the first ground of appeal, it is important to clarify that, as a general rule, any person appearing in court or tribunal to give evidence must take an oath. Only a child of tender age is allowed to give evidence without taking an oath, but even then, the child is required to promise the court to tell the truth before being permitted to testify.

With this clarification, I now turn to the first ground of appeal and find sections 198(1) of the CPA and 127(2) of the TEA to be significant. The CPA section reads as follows;

198.-(1) ***Every witness in a criminal cause*** *or matter shall,* ***subject to the provisions of any other written law to the***

contrary, be examined upon oath or affirmation *by the provisions of the Oaths and Statutory Declarations Act.*

And that of TEA states;

127(2) ***A child*** *of* ***tender age*** *may* ***give evidence without taking an oath or making an affirmation*** *but shall,* ***before giving evidence, promise to tell the truth*** *to the court and not to tell any lies.'*

Section 198(1) of the CPA requires that every witness, subject to the provisions of any other written law, must be examined upon oath or affirmation. On the other hand, section 127(2) of the TEA allows a child of tender age to give evidence without taking an oath or making an affirmation, but they must promise to tell the truth before giving their evidence.

The issue in the current case is that PW4, being an adult, her evidence had been taken under section 127(2) of the TEA, where she promised to tell the truth. The question is was this proper?

Subsection (4) of section 127 defines a child of tender age as one whose apparent age is not more than fourteen years.

The records show that at the time PW4 gave her evidence, she was 17 years old. Before her evidence was taken, the trial court recorded her as follows;

`PW4: Victim 17 years.

I am Christian. Yes. I always going to worship. I am not schooling as I was stopped. I don't know the meaning of an oath. I promise this court that I will tell I salt(sic) and not to tell any leas(sic). Section 127(2) CPA Complied with.'

By looking at what transpired here, it is clear that the trial magistrate intended to comply with section 127(2) of the TEA rather than CPA as cited therein.

Considering what transpired during the taking of PW4's evidence, it is obvious that the trial court took the evidence of PW4, the victim, without administering an oath or affirmation. It should be noted that section 198(1) is intended for all witnesses, and the prescribed procedure must be followed before they give their evidence.

In her submissions, the State Attorney, while acknowledging that PW4's evidence was not administered under the correct section, pointed out that this could be rectified under section 388 of the CPA, as the appellant was not prejudiced in any way.

Since PW4 was not a child of tender age, I agree with Mr. Ahyadu's submission that it was incorrect for the trial court to record PW4's testimony under section 127(2) of the TEA. Instead, as an adult, her evidence should have been recorded under section 198(1) of the CPA.

When my brother Kakolaki, J encountered a similar situation in the case of Duwa Ngoi, which was cited by Mr. Ahyadu for the appellant he stated;

'In this case like in the above-cited case, the evidence of PW1 no doubt was obtained in violation of the provision of section 198(1) of the CPA as section 127(2) of the Evidence Act is inapplicable to her. Since the same was received by the Court illegally the only remedy is to discard it, which course I am taking by expunging it from the record.'

Besides, the Apex Court in this jurisdiction, when faced with a similar issue in the case of **Anthony Mwita & Two Others v. R**, Criminal Appeal No. 264 of 2010 (unreported), succinctly stated that;

Section 198 (1) of the Criminal Procedure Act (Cap 20 - RE 2002) (the CPA) requires every witness in a criminal cause or matter (subject to the provisions of any written law to the contrary) to give evidence either on oath or affirmation by the provisions of the Oaths and Statutory Declarations Act (Cap 34 - RE 2002) (the Act). Section 4 of the Act and the rules

thereunder require that in judicial proceedings, courts administer oaths to witnesses professing Christianity and affirmations to those who are not Christians. ***This Court has already taken the view***

that if evidence of any witness is taken without oath or affirmation, such evidence is no evidence at all and is to be discarded.'

Again, in the case of **Juma Kuyani & Another v. R**, Criminal Appeal No. 525 of 2015, reported in TanzLII, when discussing sections 198(1) of the CPA and 127(2) of the TEA, the court acknowledged a clear confusion between the correct application of the two statutory provisions. After thorough discussion of these two provisions and referencing various other cases such as **Godi Kasenegela v. R**, Criminal Appeal No. 10 of 2008, **Minja Sigore@ Ogora v.** R, Criminal Appeal No. 58 of 2008, **Membi Steyani v. R**, Criminal Appeal No. 300 of 2008, **Athumani Bakari v. R**, Criminal Appeal No. 284 of 2008, and **Andrea Ngrura v. R**, Criminal Appeal No. 15 of 2003, the Court of Appeal stated;

'We believe that from these authorities, it is clear that the two sections are independent of each other and apply under different sets of circumstances. Section 198 (1) of the C.P.A. mandatorily directs that every competent witness in criminal proceedings must be sworn or affirmed before testifying unless there is another written law directing otherwise.'

In addition to that the Court also stated that section 127(2) of the TEA is one of those few written laws mentioned in section 198(1) of the CPA.

It should be noted that the discussion by the Court of Appeal of section 127(2) was before the amendments of 2022 to the TEA, where this section required children of tender age who do not understand the nature of an oath or affirmation to give evidence without taking an oath or affirmation if the court is satisfied that such a child possesses sufficient intelligence and understands the duty of speaking the truth. However, after the amendments, the section now states;

> '*A child of tender age may give evidence without taking an oath or making an affirmation but shall, before giving evidence, promise to tell the truth to the court and not to tell any lies.*'

Despite these changes, the section did not alter the kind of witness required to promise; it still specifies solely a child of tender age. Therefore, after an extensive discussion, the Court of Appeal concluded;

> '*It goes without saying, therefore, that section 127 (2) of the Evidence Act does not cover competent adult witnesses of the category of PW4 Ziada, Her evidence was accordingly irregularly received by the trial court. It was not evidence worth being acted upon in a criminal proceeding and the learned first appellate judge*

was enjoined by law to discount it as urged by the appellants. As he failed to do so, we are now constrained to expunge the unsworn/unaffirmed statement of PW4 Ziada from the record.'

Applying the principles from the authorities as I have outlined above, I disagree with the State Attorney's contention that failure to adhere to the requirements of section 198(1) can be remedied by Section 388 of the CPA. Evidence taken without an oath is inadmissible under any circumstances. The Apex Court has already clarified this position.

Therefore, the prayer to invoke section 388 of the CPA is unfounded. Since PW4's evidence was recorded contrary to Section 198(1) of the CPA, it is hereby expunged from the record.

After expunging PW4's evidence, the State Attorney argues that the remaining evidence can still prove the charge against the appellant. On the other hand, Mr. Ahyadu contends that after expunging PW4's evidence, there will be no evidence left to incriminate the appellant.

To assess whether the remaining evidence can still establish the appellant's guilt, I re-evaluated the testimony presented in the trial court.

First, I agree with the State Attorney that the offence charged against the appellant is statutory rape, where the elements required to be proved are the age of the victim, penetration, and the involvement of the accused as the perpetrator.

To determine if the age was proven, I began by examining the charge sheet, which states that the victim was 15 years old at the time the offence was committed, between August 2022 and October 2022. However, none of the witnesses testified that the victim was 15 years old at the time the offence was committed.

Only PW1 stated in her testimony that by the time PW4 was found pregnant, she was 17 years old. However, she did not explain how she knew that PW4 was 17 years old or provide her birth year to substantiate the claim.

While I acknowledge that I have expunged PW4's evidence, to clarify the issue of age, it is worth noting that PW4 stated during her testimony that she was 17 years old.

PW3's testimony, despite tendering the admission register book page and the Assessment Form of Standard Four, did not indicate PW4's age to the trial court.

Therefore, considering the age stated in the charge sheet, none of the witnesses were able to confirm to the trial court that PW4 was 15 years old at the time the offence was committed.

I say this because if you look at the charge sheet, it states that the victim was 15 years old. PW1 says that by the time the victim was found pregnant, she was 17 years old. However, PW4, on the day she appeared

in court, stated that she was 17 years old. If PW1's stated age of the victim was correct, then when the victim appeared in court to give evidence, she would not have been 17 years old anymore, as she appeared in court a year later after the incident allegedly occurred between August 2022 and October 2022.

Even if the prosecution might have wanted me to infer that since PW1 stated PW4 was 17 years old at the time the offence was committed, meaning that she was under 18 years old and thus the age was established, this is not sufficient.

The prosecution needed to prove the victim's age at the time the offence was committed, as stated in the charge sheet. Since this was the duty to be fulfilled by the prosecution, I conclude that the prosecution failed to prove the age of the victim beyond reasonable doubt.

The offence faced by the appellant is statutory rape, and since the age of the victim has not been proven, I cannot proceed to discuss the remaining elements, as they depend on age being proven first. These elements include penetration and the involvement of the appellant as the perpetrator.

By expunging PW4's evidence, therefore there is no remaining evidence that can incriminate the appellant with the offence of rape.

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By expunging PW4's evidence, therefore there is no remaining evidence that can incriminate the appellant with the offence of rape.

Considering the first ground of appeal as discussed above, I ascertain merit in it that the prosecution failed to fulfil their duty to the required standard of proving the case beyond reasonable doubt. Consequently, I allow the appeal and order that the appellant be released forthwith from prison unless lawfully held for another cause.

It is so ordered.

Dated at Mtwara this 26th June 2024.

M.B. Mpaze

Judge

COURT: Judgement delivered in Mtwara on this 26th day of June, 2024 in the presence of the appellant in person, Mr. Ahyadu Nanyohe the learned advocate for appellant and Mr. Justus Zegge, the learned state attorney for the Republic.

M.B. Mpaze

Judge

26/06/2024